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JEFF MARTIN, MIKKI LEE MARTIN,
6 BRAND X MARTIAL ARTS, and CROSSFIT
BRAND X, INC.
7

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 CROSSFIT, INC., a Delaware corporation,
11 Plaintiff and Counterdefendant,

12 v.

13 JEFF MARTIN, an individual; MIKKI LEE
14 MARTIN, an individual; and BRAND X
MARTIAL ARTS, a business entity of
15 unknown origin,

16 Defendants and Counterclaimants.

17 AND RELATED COUNTERCLAIMS

Case No. 2:14-cv-02277-JJT

**COUNTERCLAIMS AND ANSWER OF
JEFF MARTIN, MIKKI LEE MARTIN,
BRAND X MARTIAL ARTS, AND
CROSSFIT BRAND X, INC.**

JURY TRIAL DEMAND

Complaint Filed: October 14, 2014
Trial Date: None Set

INTRODUCTION

1. CrossFit, the high-intensity sport and training regimen, is now a worldwide phenomenon; and CrossFit, Inc., the company behind the sport, a juggernaut. It has 10,000 affiliate gyms and tens of thousands of certified trainers across the globe. Along with these affiliates and trainers come legions of practitioners: There may be millions of CrossFitters. 209,000 athletes competed in this year's CrossFit Games Open in the hopes of qualifying for the CrossFit Games, an annual competition with prizes totaling \$1.75 million. Superlatives have been heaped upon it—one of the fastest growing sports in America, according to *Forbes*; the world's most beautifully addictive workout, according to *Inc.* The company now has partnerships with clothing and shoe giant Reebok, equipment retailer Rogue Fitness, and supplement manufacturer Progenex.

2. In 2004, things were very different. CrossFit was a fledgling company that had just hired its first employee and filed its first trademark application, and had fewer than 10 affiliated gyms. The sport was seen as a cultish fad—strange, reckless, and potentially dangerous for all but the fittest. That year, the sport's creator and company's founder, Greg Glassman, had an idea: What if someone adapted the principles of CrossFit to particular populations, like children, or athletes in particular sports, or the elderly? Would that not prove that CrossFit was something radically loose and open that could be adapted for everyone?

3. Lacking the funds, infrastructure, time, and employees to test this idea, Glassman turned to two experienced youth trainers, Jeff Martin and Mikki Lee Martin, and asked them to develop a turnkey program for minors called "CrossFit Kids." In return, he said, the Martins would own the CrossFit Kids name and program for 100 years, so that they, their children, and their children's children would benefit from their contributions to the sport and company. The Martins immediately set to work, posting the first CrossFit Kids workout within weeks.

4. The next six years were a hard slog. The Martins painstakingly gathered data, developed best practices, and built a network of worldwide CrossFitters working with athletes under 18. They lost money every year, liquidated their savings and retirement accounts to keep

1 the program afloat, and abandoned their other course offerings to focus exclusively on CrossFit
2 Kids. All along the way, Glassman encouraged the Martins down the path—telling them they
3 should “go all in,” and affirming time and again that CrossFit Kids belonged to them for 100
4 years.

5 5. Glassman was motivated at least in part by self-interest. As he explained to the
6 Martins in a 2007 voicemail, the CrossFit Kids program was “building that future generation of
7 CrossFitters,” and a close integration between CrossFit and CrossFit Kids “would expand the kind
8 of global empire” and “drive traffic to the CrossFit [web]site.” Glassman also pushed for a close
9 integration of his and the Martins’ personal lives. He made them the godparents of his four
10 children, and asked the Martins to move from California to Arizona to live closer to them.

11 6. By 2010, Glassman’s self-interest had turned to avarice. CrossFit Kids was
12 growing rapidly, and finally turning a profit. Its training seminars were booked, with new ones
13 being added monthly; its affiliate gym program had more than 200 members and was expanding
14 geometrically. Sensing the program’s potential, and eager to capture the revenue it would
15 generate—including from a then-secret deal with Reebok—Glassman began a series of
16 machinations that would ultimately deprive the Martins of the fruits of their years of labor.

17 7. First, Glassman asked them to bring CrossFit Kids “under the CrossFit umbrella”
18 and integrate the program completely into “CrossFit HQ.” Next, he told them they should disband
19 the CrossFit Kids affiliate program and allow CrossFit to set the schedule for the CrossFit Kids
20 training seminars. Once the Martins had done so—eliminating one income stream entirely, and
21 placing the other in CrossFit’s control—Glassman used the Martins’ economic dependence to
22 force them to give up the lion’s share of the revenue from the CrossFit Kids program under a
23 “transition agreement.” CrossFit almost immediately breached that agreement, refusing to pay the
24 Martins their share of revenue and manipulating the accounting for the training seminars so that it
25 appeared the Martins were taking a loss, when they should have been making a profit.

26 8. Throughout this maneuvering, Glassman led the Martins to believe he was looking
27 out for their interests: He affirmed that CrossFit Kids was theirs “forever,” and foreswore any

1 interest in taking the business away from them. He promised he would make them wealthy
2 enough for several lifetimes by increasing CrossFit's affiliate fees and giving the Martins a share
3 of those fees and by sharing a percentage of all CrossFit sponsorship and advertising revenue. He
4 called them "brother" and "family" and told them he loved them.

5 9. Once CrossFit Kids was fully integrated into CrossFit, Glassman cut off almost all
6 communications with the Martins. This made it impossible for the Martins to address their
7 concerns about the handling of the CrossFit Kids program and CrossFit's failure to share revenue
8 with them. When they spoke to other CrossFit personnel, they were told that only Glassman could
9 answer their questions, but that he was unavailable, or unable to focus on them because of the
10 company's other demands, or going through a difficult time because of his divorce from CrossFit
11 cofounder Lauren Glassman and the attempted buyout of Lauren's 50% stake in CrossFit by
12 Anthos Capital, or simply not in the right mindset. Trusting Glassman and sympathetic to his
13 struggles, the Martins forbore.

14 10. In early 2014, as the Martins began to press CrossFit for information about the
15 revenues they should have been earning from the CrossFit affiliate fees and other sources, the truth
16 about CrossFit's and Glassman's plan finally came out. The company began to take the position
17 that the Martins had no rights to the CrossFit Kids name and program, and were simply at will
18 employees. It demanded that the Martins turn over their crossfitkids.com website and give up
19 their rights to CrossFit Kids—and then, after stalling negotiations over a possible buyout,
20 suddenly fired them both and brought this trademark infringement suit against them, claiming that
21 the Martins were (after 10 years of open use) violating CrossFit's trademarks by maintaining the
22 CrossFit Kids website.

23 11. Left with no other option, the Martins and their companies, Brand X Martial Arts
24 and CrossFit Brand X, Inc. (collectively, "the Martins") now bring these counterclaims and
25 answer CrossFit's infringement claims.

COUNTERCLAIMS**FACTUAL BACKGROUND****A. THE MARTINS FOUND BRAND X MARTIAL ARTS**

12. The Martins met in 1985, and married in 1988. In 1989, they started a small business installing and maintaining cable and phone systems and in 1992 moved it to downtown Ramona, California. Both were passionate athletes and martial arts devotees, and in 1999 they moved the phone equipment to the back of their store and began to teach kickboxing and street-fighting classes out of their storefront. From the beginning, youth classes were a centerpiece of their program. Krav Maga, Kenpo, and self-defense classes followed, and in 2004 the Martins relocated their growing school to a 4,200-square-foot space nearby.

B. THE MARTINS MEET AND DEVELOP A CLOSE PERSONAL RELATIONSHIP WITH GREG AND LAUREN GLASSMAN

13. Meanwhile, the Martins had discovered CrossFit. The couple began following the company's "workouts of the day" online in 2003, and became certified CrossFit instructors in April and November 2004.

14. In mid-2004, the Martins met Greg and Lauren Glassman at a CrossFit-sponsored barbeque at the Glassmans' home in Santa Cruz, California. The two couples hit it off, and over the coming years, became extremely close. From late 2004 through 2006, Greg Glassman asked the Martins to attend most CrossFit certifications he conducted (initially once a month, and then more frequently). The Glassmans invited the Martins' eldest child to get his CrossFit trainer certification when he was only 13, and when he attended the course, he stayed in the Glassmans' home. In 2006, the Glassmans made the Martins the godparents of their firstborn daughter; they would do the same with the Glassmans' next three children. When the Glassmans moved to Prescott, Arizona, Greg Glassman told the Martins that he wanted them to be part of his children's lives, and asked them to consider leaving Ramona to join the Glassmans in Prescott.

1 **C. THE MARTINS FOUND CROSSFIT KIDS UNDER A 100-YEAR EXCLUSIVE,**
2 **IRREVOCABLE LICENSE AND DEVOTE THEMSELVES TO THE PROGRAM**
3 **FULL-TIME**

4 15. In August 2004, Brand X Martial Arts became the fifth CrossFit affiliate and began
5 to use the name CrossFit Brand X. In November 2004, the Martins attended a weekend CrossFit
6 trainer seminar in Golden, Colorado. That weekend, the Martins, Glassman, and other CrossFit
7 personnel shared breakfast. During the meal, Glassman opined that he could see CrossFit having
8 different applications to different populations—there might be a CrossFit Baseball or CrossFit
9 Golf, for example, or CrossFit for the elderly or youth.

10 16. While discussing youth, Glassman told the Martins that, since they were already
11 working with minors, they should create a complete CrossFit Kids program that would include
12 affiliates, training courses, a written curriculum, and an online magazine. “Go make it happen,”
13 he said.

14 17. The Martins immediately set to work developing the CrossFit Kids program. They
15 posted the first CrossFit Kids workout of the day in early December 2004 on the Brand X website.

16 18. Over the coming years, and with Glassman’s and CrossFit’s knowledge and
17 encouragement, the Martins invested thousands of hours and tens of thousands of dollars into
18 developing the CrossFit Kids program. They issued workouts of the day; launched and created
19 content for the CrossFit Kids magazine; fielded questions from CrossFit practitioners all over the
20 world; created and maintained a database of how CrossFit Kids was being used with a variety of
21 youth populations (such as children with autism and high school athletes); established an extensive
22 network of CrossFit Kids practitioners; created training seminars to teach CrossFit instructors how
23 to safely teach minors; assembled a training team; and developed a set of goals and best practices
24 for teaching CrossFit to youth based on their experience and data gathered from their network.
25 The Martins also maintained public websites for the program, launching their workouts of the day
26 on the Brand X Martial Arts forum in December 2004, crossfitkids.blogspot.com in March 2006,
27 crossfitkids.typepad.com in December 2006, and crossfitkids.com in September 2007.

19. During this same period, Glassman repeatedly stated that CrossFit had exclusively
and irrevocably licensed the CrossFit Kids program to the Martins for 100 years. In private

1 conversations with the Martins, he said, “Everything under 18 is yours.” At meetings of affiliates
2 and training courses, he introduced the Martins as “the CrossFit Kids people,” and explained that
3 “they own CrossFit Kids.”

4 20. In late 2007, the Martins faced a critical juncture: CrossFit Kids was consuming all
5 of their time and energy—so much so that they had ceased to conduct the martial arts classes that
6 had been their mainstay for the prior eight years—but the program was not producing much
7 revenue. Jeff had also been laid off from his biotech company, and was considering whether to
8 pursue a new job in that field. With three sons, the Martins had to consider their future. At a
9 meeting in Prescott, the Martins told Glassman of their dilemma. In response, Glassman told the
10 Martins that they should “go all in” with CrossFit Kids. He confirmed that the name and program
11 would be theirs for 100 years—with the Martins, their children, their children’s children, and so
12 on. Glassman also claimed he had more money than he knew what to do with in five lifetimes,
13 and that CrossFit Kids would, likewise, make the Martins wealthy. Glassman also told the
14 Martins that he and CrossFit would assist the Martins with their growth and expansion of the
15 CrossFit Kids program.

16 21. Relying on Glassman’s statements and their close personal relationship, and with
17 Glassman’s and CrossFit’s knowledge, the Martins cashed in their savings and retirement funds to
18 invest in and advance CrossFit Kids, and focus their full attention on developing the program.

19 22. After the meeting in Prescott, Glassman left a voicemail message for the Martins
20 reiterating that the turnkey CrossFit Kids program belonged to them; that their efforts were
21 “building that future generation of crossfitters,” that the Martins had become “HQ people,”
22 “different from the other[]” affiliated gyms and trainers; and promising to absorb any costs
23 incurred by the Martins if they would link the CrossFit Kids website to the CrossFit website to
24 “expand the kind of global empire” and “drive traffic to the CrossFit [web]site.”

25 23. In 2008, CrossFit Kids elementary school plans became available for purchase
26 from the Martins. With Glassman’s and CrossFit’s knowledge, all proceeds from these sales went
27 to the Martins. In January 2008, the Martins also began to offer the CrossFit Kids training

1 seminar every other month; Glassman and CrossFit were aware that these proceeds, too, went to
2 the Martins.

3 24. In February 2008, the Martins launched the CrossFit Kids affiliate program. The
4 cost to affiliate started at \$250 and, by 2010, rose to \$500 to reflect increased demand. The
5 income from these affiliations, with Glassman's and CrossFit's knowledge, went directly to the
6 Martins.

7 25. In the spring of 2008, the Martins further invested in the expansion of the
8 infrastructure of CrossFit Kids. They paid support staff and researchers directly, purchased office
9 equipment and advertising for their CrossFit Kids venture, and continued to create CrossFit Kids
10 publications through Brand X.

11 **D. CROSSFIT AND GLASSMAN HATCH A PLAN TO WREST CONTROL OF**
12 **CROSSFIT KIDS FROM THE MARTINS**

13 26. Thanks to the Martins' assiduous efforts, CrossFit Kids thrived. By 2009, they
14 were giving 24 training courses per year, with 30-40 attendees each; in 2010, they gave 28
15 courses, with 30-45 attendees each. This growth translated directly into profitability: After years
16 of losing money, in 2009 the program netted \$132,000, and in 2010 it netted \$264,000. Glassman
17 and CrossFit noted this growth and the potential of the CrossFit Kids brand, and decided to wrest
18 control of the program from the Martins.

19 27. In early 2009, under the guise of "getting my arms around all things CF [CrossFit]
20 (legally)," CrossFit's General Counsel, Dale Saran, asked the Martins about the terms of their
21 CrossFit Kids license, including how the Martins received their payments for the CrossFit Kids
22 training courses, and whether the license was written or oral. Over the summer and early fall of
23 that year, Saran circulated drafts of a written agreement CrossFit intended to memorialize the
24 CrossFit Kids license, but which did not accurately reflect the terms of that license—including its
25 irrevocable nature, its 100-year term, and the Martins' entitlement to 80% of the revenue
26 generated by the CrossFit Kids program. On information and belief, this agreement was never
27 executed. If it had been, it would also lack consideration (because it inaccurately memorialized an
existing agreement and attempted to impose on the Martins considerably worse terms than they

1 were entitled to), and CrossFit has conceded that the agreement is not an accurate summary of the
2 CrossFit Kids license by admitting after execution that the Martins “own” CrossFit Kids for 100
3 years.

4 28. In mid-2010, Glassman asked the Martins to meet with him in person at the Se
5 Hotel in San Diego (now the Palomar). At that meeting, Glassman told the Martins that he
6 thought the CrossFit Kids program should “come under the CrossFit umbrella.” As he began to
7 explain his vision for integrating CrossFit Kids into the CrossFit business, the Martins asked
8 Glassman, “Are you trying to take CrossFit Kids away from us?” “Absolutely not,” Glassman
9 responded. “You are CrossFit Kids; I told you that CrossFit Kids is yours forever. I would like to
10 have you come on board as the CrossFit Kids youth program directors. We’ll have a CrossFit
11 Kids department, which you’ll continue to run. I won’t harm a hair on your heads.” In this same
12 meeting, Glassman said that he thought it would be problematic to maintain two separate
13 affiliations—one for CrossFit, and one for CrossFit Kids—and so that the CrossFit Kids affiliate
14 program should be wound down.

15 29. What Glassman did not disclose was that, at the same time as he was asking the
16 Martins to integrate their business into CrossFit, his company was in the midst of negotiating a
17 major partnership with Reebok. On information and belief, CrossFit’s legal team realized during
18 those negotiations that the company did not have control over the CrossFit Kids name and
19 program, because they had been exclusively and irrevocably licensed to the Martins for 100 years.
20 Without that control, the company could not license the CrossFit Kids name to Reebok; Reebok
21 could not sell CrossFit Kids-branded shoes and apparel; and CrossFit and Glassman could not
22 collect the millions of dollars in revenue expected from the deal.

23 30. Over the coming months, the Martins had several more conversations with
24 Glassman and others at CrossFit about the CrossFit Kids transition. Each time, Glassman
25 affirmed that he was not seeking to take the brand and program away from the Martins, telling
26 them that they would be “the Greg and Lauren Glassman of CrossFit Kids.”
27

1 31. In September 2010, Glassman told the Martins that CrossFit needed to have them
2 “on board” by January 2011, and needed to promptly wind down the CrossFit Kids affiliate
3 program in order to prepare affiliates for the change. The Martins were concerned about this
4 proposal, because they had come to rely on the income from the affiliate program, and expressed
5 their worry to Glassman. In response, Glassman agreed to compensate the Martins for the income
6 they would lose by increasing the price for CrossFit affiliations from \$2,000 to \$3,000 annually
7 and giving the Martins \$500 annually from every affiliate running a CrossFit Kids program (about
8 25% of the affiliates worldwide at the time) beginning in January 2011. He also agreed to share
9 2% of all CrossFit advertising and sponsorship revenue with the Martins, and agreed to support
10 their creation of a second level CrossFit Kids training course, additional curricula to support
11 educators using CrossFit Kids, and “whatever else you want.”

12 32. Based on Glassman’s promises and their longstanding close personal relationship
13 with him, in September 2010 the Martins shut down the CrossFit Kids affiliate program, ceasing
14 to issue new affiliations or collect revenue from existing affiliates. This created immediate
15 economic pressure on the Martins to complete the transition Glassman and CrossFit had proposed.
16 CrossFit and Glassman deliberately took advantage of this pressure by dragging out the
17 negotiation and drafting of the transition agreement to pressure the Martins into accepting terms
18 significantly worse than they were entitled to under their CrossFit Kids license.

19 33. In late 2010, the Martins repeatedly raised concerns with Glassman about the
20 impact terminating the affiliate program had upon them, about the need to replace their lost
21 revenue, and about the unfair terms that they were being offered. Each time, Glassman assured
22 the Martins that they would be treated fairly and that their financial stake in the CrossFit Kids
23 program would not be diminished, and that the details of the arrangement would be worked out
24 soon. Aware that Glassman was going through a difficult personal time owing to his divorce from
25 his wife, and trusting Glassman implicitly, the Martins continued the transition process.

26 34. In November 2010, CrossFit presented the Martins with a draft written CrossFit
27 Kids Transition Agreement. Like the 2009 draft license agreement, the transition agreement

1 offered terms far worse than the Martins were entitled to under their CrossFit Kids license. Their
 2 existing license entitled them to 80% of all revenues from the CrossFit Kids training courses
 3 (which were projected at around \$642,000 for 2011 and \$1 million for 2012), and 100% of the
 4 other revenues from the CrossFit Kids program—all of which were rapidly increasing. By
 5 contrast, the draft transition agreement provided for a \$75,000 annual salary for both Jeff and
 6 Mikki in the first year, decreasing to \$50,000 in the second year and \$25,000 in the third and all
 7 subsequent years; and limited them to an 80% share of net profit from the first 12 CrossFit Kids
 8 training courses taught by them in any year, and to a 20% share of net profit for courses taught by
 9 the Martins after the first 12 and all courses taught by others. At the same time, the transition
 10 agreement said nothing about the Martins' ownership of the CrossFit Kids name and program or
 11 their entitlement to a share of affiliate fees and advertising and sponsorship revenue, and
 12 Glassman and CrossFit said nothing to suggest that it affected that ownership or profit sharing,
 13 and so the Martins continued to understand that they held their license and were entitled to those
 14 profits.

15 35. Backed into a corner by Glassman's and CrossFit's maneuvering, and trusting in
 16 Glassman, the Martins signed the transition agreement. Because that agreement was the product
 17 of fraud and duress, it is unenforceable against the Martins.

18 **E. CROSSFIT AND GLASSMAN FAIL TO LIVE UP TO THEIR PROMISES AND**
 19 **CONVINCE THE MARTINS TO DELAY THEIR EFFORTS TO ENFORCE**
 20 **THEIR RIGHTS**

21 36. In early 2011, almost immediately after executing the transition agreement,
 22 CrossFit began to breach it. It scheduled the CrossFit Kids training courses on short notice,
 23 driving down enrollment; manipulated the accounting for the program by attributing costs to the
 24 courses that had not previously been charged to them; and paid the Martins a tiny fraction of the
 25 profits from the courses (less than \$2,000, as compared with the \$40,000 the Martins had grossed
 when they ran a training course in December 2010).

26 37. In May 2011, when the Martins raised concerns about their treatment, CrossFit
 27 agreed to double their salary to \$150,000, and assured them that, once the CrossFit Kids training

1 courses were running steadily again, the company would begin sharing with them all profits
2 related to CrossFit Kids. For his part, Glassman promised “to make it right.”

3 38. Later that year, the Martins again tried to address their concerns about the program
4 with Mulvaney. Mulvaney told the Martins that Glassman was the only one who could resolve
5 their concerns, but that Mulvaney could not get ahold of Glassman. Neither part of this was
6 unusual: Although Glassman insisted on making most decisions about CrossFit personally, and
7 had empowered no one else to do so in his absence, he would often make himself unavailable for
8 weeks at a time, no matter how pressing the company’s business. The Martins also knew that
9 Glassman was going through a difficult time personally, as his divorce from Lauren Glassman had
10 grown ugly.

11 39. This pattern would play itself out repeatedly over the coming years. The Martins
12 would attempt to raise their concerns with CrossFit personnel (including Mulvaney, Affiliate
13 Director Kathy Glassman, CFO Ken Smith, Saran, Paralegal Esther Dohl, and Marketing Director
14 Jimi Letchford) about the CrossFit Kids program and their treatment; would be told that only
15 Glassman could make decisions about their issues, but that he was unavailable or that it was not a
16 good time to speak to him due to his divorce, the attempted buyout of Lauren Glassman’s 50%
17 stake in CrossFit by Anthos Capital, or the company’s financial troubles; and would be asked to
18 wait a little longer, when Glassman would assuredly make things right. When the Martins
19 occasionally bumped into Glassman at CrossFit events, he would be surrounded by an entourage,
20 and would tell them that he wanted to speak to them about the CrossFit Kids program, but that he
21 could not do so at the moment. Trusting in Glassman and wanting to be considerate of his
22 personal and professional struggles, the Martins forbore.

23 40. Not until March 2014—when CrossFit began to take the position that the Martins
24 held no rights to the CrossFit Kids name or program—did the Martins realize that Glassman and
25 CrossFit had no intention of resolving the Martins’ concerns, but instead planned to keep all of the
26 profits from the CrossFit Kids program for themselves.
27

1 41. That month, Director of Training Castro and Director of Certification Nicole
2 Carroll demanded that the Martins turn over the CrossFit Kids website and email domains. When
3 the Martins reminded them about the prior promises to share revenue, Castro and Carroll
4 responded that CrossFit “did not do that anymore.” The Martins did not turn over the CrossFit
5 Kids domains or the CrossFit Kids materials they created.

6 42. CrossFit grew increasingly hostile towards the Martins. In May 2014, CrossFit
7 made an unacceptable and blatantly unfair proposal to the Martins that would have cut their
8 salaries even further and eliminated their profit-sharing rights and ownership of CrossFit Kids.
9 The Martins did not relinquish their ownership interest or entitlement to revenue from CrossFit
10 Kids. As a show of their continued commitment to Glassman and CrossFit, however, they agreed
11 to continue to perform services for CrossFit over and above the work they performed for CrossFit
12 Kids.

13 43. In July 2014, CrossFit’s Castro asked the Martins to delay further discussions of
14 their CrossFit Kids concerns due to a “cash flow situation” at CrossFit. The Martins waited as
15 requested.

16 44. On August 25, 2014, the Martins met with CrossFit representatives Castro and
17 Carroll, who again attempted to persuade them to relinquish all of their rights in CrossFit Kids and
18 asked the Martins to release all claims they might have against the company with only 14 days to
19 consider the release (in violation of federal standards requiring that employees over 40 years old
20 be given 21 days to consider any release of discrimination claims). The Martins did not acquiesce.

21 45. On September 4, 2014, CrossFit provided a revised settlement agreement to the
22 Martins for their consideration. It contained inaccurate “factual” recitations, provided only for “at
23 will” employment at CrossFit (to which they were already entitled), included false “admissions”
24 by the Martins, and purported to have the Martins agree to relinquish all right, title, and interest in
25 CrossFit Kids (except for the curriculum they had created).

26 46. The Martins attempted to negotiate in good faith with CrossFit, offering to permit
27 CrossFit to buy them out of their CrossFit Kids license so that CrossFit could operate the CrossFit

1 Kids program free of any doubt about its intellectual property rights, and so that the Martins could
 2 carry on their youth training programs independently of CrossFit. CrossFit refused.

3 **F. CROSSFIT DEFAMES AND FIRES THE MARTINS AND BRINGS THIS BAD**
 4 **FAITH INFRINGEMENT ACTION TO BULLY THE MARTINS INTO GIVING**
 5 **UP THEIR RIGHTS**

6 47. At some point in September 2014, CrossFit began to defame the Martins, telling
 7 individuals in the fitness industry (including participants at the annual CrossFit Trainers Summit
 8 in San Diego) that the Martins' interest in CrossFit and CrossFit Kids had waned and that their
 9 professional performance was subpar.

10 48. In mid-October 2014, CrossFit suddenly terminated the Martins without
 11 explanation. CrossFit simultaneously filed trademark infringement and contract claims against the
 12 Martins, asserting they were using the CrossFit Kids name without authority. Those claims are
 13 groundless, unreasonable, vexatious, and pursued in bad faith: As described in detail above, the
 14 Martins founded CrossFit Kids at Glassman's instigation, have openly made use of the CrossFit
 15 Kids name for ten years, and hold an exclusive, irrevocable 100-year license to the name and
 16 program. Mikki also remains a licensed affiliate entitled to operate CrossFit Brand X, and so use
 17 the CrossFit name in connection with that affiliate's services. Only by ignoring a decade of
 18 history could one conclude that the Martins had infringed CrossFit's trademarks.

19 **G. THE MARTINS REMAIN THE OWNERS OF CROSSFIT KIDS AND ARE STILL**
 20 **ENTITLED TO PROFIT-SHARING FROM CROSSFIT**

21 49. As it stands now, the Martins remain the exclusive, irrevocably licensed owners of
 22 the CrossFit Kids name and program, and so are entitled to all the incidents of ownership—
 23 including 80% of all revenues collected by CrossFit from the CrossFit Kids training courses
 24 (estimated at more than \$3.6 million per year), all revenues from the CrossFit Kids written
 25 curriculum (estimated at nearly \$90,000 per year), \$500 of the annual fees paid by each affiliate
 26 that operates a CrossFit Kids program since January 2011 (estimated at \$1.25 million per year),
 27 and all revenues from the CrossFit-Reebok licensing deal related to sales of CrossFit Kids shoes
 and apparel (estimated at millions more annually). They are also entitled to 2% of all CrossFit
 sponsorship and advertisement revenue.

1 50. Although CrossFit has failed to pay these amounts, it continues to publicly
2 recognize the Martins' creation of and rights in the CrossFit Kids brand: Its online journal is rife
3 with references to them as the "founders" and "creators" of CrossFit, and the front page of the
4 crossfit.com website contains a prominent link to the Martins' crossfitkids.com website.

5 **H. PARTIES, JURISDICTION, AND VENUE**

6 51. Jeff and Mikki Lee Martin are residents of Ramona, California.

7 52. Brand X Martial Arts is a sole proprietorship with its principal place of business in
8 Ramona, California.

9 53. CrossFit Brand X, Inc. is a California corporation with its principal place of
10 business in Ramona, California.

11 54. Greg Glassman is a resident of Prescott, Arizona.

12 55. CrossFit, Inc. is a Delaware corporation with its principal place of business in
13 Washington, D.C.

14 56. This Court has subject matter jurisdiction over the Martins' claims under 28 U.S.C.
15 § 1332 because the parties are diverse in citizenship and the amount in controversy exceeds
16 \$75,000. Independently, this Court has supplemental subject matter jurisdiction over the Martins'
17 claims under 28 U.S.C. § 1367 because CrossFit has asserted claims against the Martins arising
18 under a federal statute and the Martins' counterclaims arise from the same common nucleus of
19 operative fact, and so form part of the same case or controversy under Article III of the United
20 States Constitution.

21 57. This Court has personal jurisdiction over CrossFit because it conducts substantial
22 business in this District, took actions within this District that harmed the Martins, and availed
23 itself of this Court's jurisdiction by filing its Complaint in this action.

24 58. This Court has personal jurisdiction over Glassman because he resides in this
25 District and took actions within this District that harmed the Martins.

59. This Court is the proper venue for these claims because CrossFit and Glassman are resident in this District; a substantial part of the events and omissions giving rise to the Martins' claims occurred here; and CrossFit filed its complaint against the Martins here.

CAUSES OF ACTION

First Cause of Action

Declaratory Relief

(The Martins Own the CrossFit Kids License; Against CrossFit and Glassman)

60. The Martins incorporate by reference paragraphs 1 through 59 above.

61. The Martins believe they are the owners of an exclusive, irrevocable 100-year license to develop a program applying the principles of CrossFit to minors and to use the name "CrossFit Kids" to describe that program, and that this license entitles them to all materials developed as part of that program (including the website, curriculum, and journals), 80% of all revenues from the training seminars, and 100% of other all revenues attributable to that program and name (including curriculum sales and revenue from the Reebok merchandising deal). CrossFit and Glassman have taken the position that the Martins do not own a CrossFit Kids license, and are not entitled to ownership or use of the CrossFit Kids name or materials.

62. There is a definite, concrete, real, and substantial dispute between the Martins on the one hand and CrossFit and Glassman on the other that touches their legal relations. These parties have adverse legal interests, because CrossFit and Glassman seek to preclude the Martins from using and profiting from the CrossFit Kids name and program the Martins created and developed. By determining that the Martins hold a license to the CrossFit Kids name and program, this Court can provide concrete relief to the Martins by permitting them to use the CrossFit Kids name and materials.

63. The Martins thus request an order declaring that they are the holders of a license to the CrossFit Kids name and program on the terms outlined in these counterclaims.

Second Cause of Action

Breach of Contract

(CrossFit Kids License; Against CrossFit)

64. The Martins incorporate by reference paragraphs 1 through 63 above.

65. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create, develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support from CrossFit in operating that program, and receive 80% of all revenues from the training seminars, and 100% of other all revenues attributable to that program and name. CrossFit benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand into the youth market, and revenues from the CrossFit Kids training seminars.

66. The Martins have performed their duties under their license by creating, developing, and operating the CrossFit Kids program. There are no other conditions to CrossFit's performance.

67. CrossFit has breached the CrossFit Kids license by failing to pay the Martins all revenues associated with the CrossFit Kids program and repudiating the license.

68. The Martins have been harmed by CrossFit's breach, because they have not received all the revenues to which they are entitled, have been prevented from operating the CrossFit Kids program with the support from CrossFit to which they are entitled, and have had their professional reputations diminished.

Third Cause of Action

Breach of Implied Covenant of Good Faith and Fair Dealing

(CrossFit Kids License; Against CrossFit)

69. The Martins incorporate by reference paragraphs 1 through 68 above.

70. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create, develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support from CrossFit in operating that program, and receive 80% of all revenues from the training seminars, and 100% of other all revenues attributable to that program and name. CrossFit

1 benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand
2 into the youth market, and revenues from the CrossFit Kids training seminars.

3 71. The Martins have performed their duties under their license by creating,
4 developing, and operating the CrossFit Kids program. There are no other conditions to CrossFit's
5 performance.

6 72. CrossFit has unfairly interfered with the Martins' right to receive the benefits of the
7 CrossFit Kids license by manipulating the costs associated with the program to make it appear that
8 the Martins had not earned profits from the CrossFit Kids training courses, using fraud and duress
9 to wrest control of the CrossFit Kids program from the Martins, and concealing its receipt of
10 revenues from the program that should have been paid to the Martins.

11 73. The Martins have been harmed by CrossFit's breach, because they have not
12 received all the revenues to which they are entitled, have been prevented from operating the
13 CrossFit Kids program with the support from CrossFit to which they are entitled, and have had
14 their professional reputations diminished.

15 **Fourth Cause of Action**

16 **Promissory Estoppel**

17 **(CrossFit Kids License; Against CrossFit and Glassman)**

18 74. The Martins incorporate by reference paragraphs 1 through 73 above.

19 75. CrossFit and Glassman made a clear and unambiguous promise to the Martins that,
20 if the Martins created, developed, and operated a program applying the principles of CrossFit to
21 minors, they would receive a 100-year exclusive, irrevocable license to use the CrossFit Kids
22 name, receive support from CrossFit in operating that program, and receive 80% of all revenues
23 from the training seminars, and 100% of other all revenues attributable to that program and name.
24 CrossFit benefited from this arrangement by receiving wider promotion of its brand, expansion of
25 its brand into the youth market, and revenues from the CrossFit Kids training seminars.

1 by each affiliate running a CrossFit Kids program, as well as 2% of all CrossFit advertising and
 2 sponsorship revenue, from January 2011 onwards. CrossFit and Glassman have taken the position
 3 that the Martins are not entitled to this revenue.

4 83. There is a definite, concrete, real, and substantial dispute between the Martins on
 5 the one hand and CrossFit and Glassman on the other that touches their legal relations. These
 6 parties have adverse legal interests, because CrossFit and Glassman seek to withhold from the
 7 Martins revenue to which they are entitled. By determining that the Martins have a right to the
 8 profit-sharing described above, this Court can provide concrete relief to the Martins.

9 84. The Martins thus request an order declaring that they are entitled to \$500 of the
 10 annual fees paid by each affiliate running a CrossFit Kids program, as well as 2% of all CrossFit
 11 advertising and sponsorship revenue, from January 2011 onwards.

12 **Sixth Cause of Action**

13 **Breach of Contract**

14 **(Affiliate Fees and Profit-Sharing; Against CrossFit)**

15 85. The Martins incorporate by reference paragraphs 1 through 84 above.

16 86. The Martins reached an agreement with CrossFit that, if the Martins disbanded the
 17 CrossFit Kids affiliate program and brought the operations of CrossFit Kids under the auspices of
 18 CrossFit, they would receive \$500 of the annual fees paid by each affiliate running a CrossFit Kids
 19 program, as well as 2% of all CrossFit advertising and sponsorship revenue, from January 2011
 20 onwards.

21 87. The Martins have performed their duties under the agreement by disbanding the
 22 CrossFit affiliate program and bringing the operations of CrossFit Kids under the auspices of
 23 CrossFit. There are no other conditions to CrossFit's performance.

24 88. CrossFit has breached the agreement by failing to pay the Martins the affiliate fees
 25 and advertising and sponsorship revenue to which they are entitled.

26 89. The Martins have been harmed by CrossFit's breach, because they have not
 27 received all the revenues to which they are entitled.

Seventh Cause of Action

Promissory Estoppel

(Affiliate Fees and Profit-Sharing; Against CrossFit and Glassman)

90. The Martins incorporate by reference paragraphs 1 through 89 above.

91. CrossFit and Glassman made a clear and unambiguous promise to the Martins that, if the Martins disbanded the CrossFit Kids affiliate program and brought the operations of CrossFit Kids under the auspices of CrossFit, they would receive \$500 of the annual fees paid by each affiliate running a CrossFit Kids program, as well as 2% of all CrossFit advertising and sponsorship revenue, from January 2011 onwards.

92. The Martins relied on this promise by disbanding the CrossFit Kids affiliate program and bringing the operations of CrossFit Kids under the auspices of CrossFit.

93. The Martins' reliance was reasonable, because CrossFit and Glassman repeatedly affirmed that they would provide the promised benefits, and because of the Martins' and Glassman's close personal relationship. The Martins' reliance was also foreseeable, because Glassman and CrossFit affirmatively requested that the Martins disband the CrossFit Kids affiliate program and bring the operations of CrossFit Kids under the auspices of CrossFit.

94. The Martins have been harmed by their reliance, because they gave up the revenue they were earning from the CrossFit Kids affiliate program and lost control of the daily operations of CrossFit Kids.

95. CrossFit and Glassman have acted contrary to their promise by failing to pay the Martins the promised fees and profit-sharing.

96. The only way to avoid injustice is to enforce CrossFit's and Glassman's promise, and hold CrossFit and Glassman liable for their breach of that promise by awarding the Martins \$500 of the annual fees paid by each affiliate running a CrossFit Kids program, as well as 2% of all CrossFit advertising and sponsorship revenue, from January 2011 onwards.

Eighth Cause of Action

Fraud

(Against CrossFit and Glassman)

97. The Martins incorporate by reference paragraphs 1 through 96 above.

98. Between mid-2004 and mid-2010, the Martins formed a close personal relationship with Glassman. The Martins acted as godparents to Glassman's four children, and entrusted their own child to the Glassmans when he traveled to Santa Cruz to take the CrossFit teacher training course. Because of that relationship, as well as Glassman's superior knowledge of CrossFit and superior success as a businessman, the Martins reposed trust in Glassman regarding the creation, development, and operation of CrossFit Kids and Glassman's and CrossFit's intentions towards CrossFit Kids and the Martins.

99. Glassman was aware of and voluntarily accepted the Martins' trust and reliance in him. He thereby assumed a role as the Martins' fiduciary with respect to the CrossFit Kids program, and so had a duty to act with the utmost good faith in the best interests of the Martins with respect to the program and disclose to them all important facts regarding their relationship.

100. In 2010, Glassman, individually and as a representative of CrossFit, asked the Martins to integrate CrossFit Kids with CrossFit and disband the CrossFit Kids affiliate program. In exchange, Glassman promised CrossFit would share with the Martins \$500 of the annual fees paid by each affiliate running a CrossFit Kids program, as well as 2% of all CrossFit advertising and sponsorship revenue, from January 2011 onwards.

101. In making these statements to the Martins, Glassman concealed that CrossFit was concurrently negotiating a partnership with Reebok; that his motivation for asking the Martins to integrate the CrossFit Kids program into CrossFit and disband the CrossFit Kids affiliate program was to take control of CrossFit Kids and the associated intellectual property and revenue; and that he and CrossFit had no intention of paying the Martins the promised profits.

102. Glassman and CrossFit were aware that Glassman's statements were false and failed to disclose important facts, and were aware of Glassman's actual motivation, plan, and intentions, as well as of the Reebok deal. The Martins were not.

103. Glassman and CrossFit intended for the Martins to rely on Glassman's statements, and intended to deceive the Martins by concealing important facts.

104. The Martins reasonably relied on Glassman's and CrossFit's statements and omissions.

105. The Martins were harmed by Glassman's and CrossFit's fraud, because they disbanded the CrossFit Kids affiliate program and gave up the associated revenue; and because they gave Glassman and CrossFit greater control over the CrossFit Kids program, which Glassman and CrossFit have used to deprive the Martins of revenues which they should have received and of the opportunity to operate the CrossFit Kids program they built. Glassman's and CrossFit's fraud was a substantial factor in causing the Martins' harm.

106. Because CrossFit and Glassman knew their statements were false, and knew that their intent was to wrest control of the CrossFit Kids program from the Martins, they acted with malice, oppression, and fraud sufficient to support an award of punitive damages.

Ninth Cause of Action

Negligent Misrepresentation

(Against CrossFit and Glassman)

107. The Martins incorporate by reference paragraphs 1 through 106 above.

108. Between mid-2004 and mid-2010, the Martins formed a close personal relationship with Glassman. The Martins acted as godparents to Glassman's four children, and entrusted their own child to the Glassmans when he traveled to Santa Cruz to take the CrossFit teacher training course. Because of that relationship, as well as Glassman's superior knowledge of CrossFit and superior success as a businessman, the Martins reposed trust in Glassman regarding the creation, development, and operation of CrossFit Kids and Glassman's and CrossFit's intentions towards CrossFit Kids and the Martins.

1 109. Glassman was aware of and voluntarily accepted the Martins' trust and reliance in
2 him. He thereby assumed a role as the Martins' fiduciary with respect to the CrossFit Kids
3 program, and so had a duty to act with the utmost good faith in the best interests of the Martins
4 with respect to the program and disclose to them all important facts regarding their relationship.

5 110. In 2010, Glassman, individually and as a representative of CrossFit, asked the
6 Martins to integrate CrossFit Kids with CrossFit and disband the CrossFit Kids affiliate program.
7 In exchange, Glassman promised CrossFit would share with the Martins \$500 of the annual fees
8 paid by each affiliate running a CrossFit Kids program, as well as 2% of all CrossFit advertising
9 and sponsorship revenue, from January 2011 onwards.

10 111. In making these statements to the Martins, Glassman concealed that CrossFit was
11 concurrently negotiating a partnership with Reebok; that his motivation for asking the Martins to
12 integrate the CrossFit Kids program into CrossFit and disband the CrossFit Kids affiliate program
13 was to take control of CrossFit Kids and the associated intellectual property and revenue; and that
14 he and CrossFit had no intention of paying the Martins the promised profits. He and CrossFit thus
15 had no reasonable grounds to believe that his statements were true when made.

16 112. Glassman and CrossFit intended for the Martins to rely on Glassman's statements
17 and omissions.

18 113. The Martins reasonably relied on Glassman's and CrossFit's statements and
19 omissions.

20 114. The Martins were harmed by Glassman's and CrossFit's misrepresentations,
21 because they disbanded the CrossFit Kids affiliate program and gave up the associated revenue;
22 and because they gave Glassman and CrossFit greater control over the CrossFit Kids program,
23 which Glassman and CrossFit have used to deprive the Martins of revenues which they should
24 have received and of the opportunity to operate the CrossFit Kids program they built. Glassman's
25 and CrossFit's misrepresentations were a substantial factor in causing the Martins' harm.

26
27

Tenth Cause of Action

Breach of Contract

(2009 License Agreement; Against CrossFit)

115. The Martins incorporate by reference paragraphs 1 through 114 above.

116. Because the 2009 license agreement was never executed and lacked consideration, it is unenforceable against the Martins.

117. In the alternative, if the 2009 license agreement is enforceable against the Martins, CrossFit breached that agreement.

118. Under the agreement, CrossFit granted the Martins an exclusive license to use the CrossFit Kids name to operate and market the CrossFit Kids program and collect 80% of all revenues from the CrossFit Kids training courses. A true and correct copy of that agreement is attached as Exhibit A.

119. The Martins have performed their duties under the agreement by operating the CrossFit Kids program. There are no other conditions to CrossFit's performance.

120. CrossFit has breached the agreement by failing to pay the Martins the revenues due to them from the CrossFit Kids training seminars.

121. The Martins have been harmed, because they have not received all the revenues to which they are entitled.

Eleventh Cause of Action

Breach of Implied Covenant of Good Faith and Fair Dealing

(2009 License Agreement; Against CrossFit)

122. The Martins incorporate by reference paragraphs 1 through 121 above.

123. Because the 2009 license agreement was never executed and lacked consideration, it is unenforceable against the Martins.

124. In the alternative, if the 2009 license agreement is enforceable against the Martins, CrossFit interfered with the Martins' right to receive the benefits of that agreement.

142. The Martins have been harmed, because they have not received all the revenues to which they are entitled and have been deprived of the opportunity to operate the CrossFit Kids program and thereby enhance their reputation.

Fourteenth Cause of Action

Intentional Interference with Contractual Relations

(Against CrossFit and Glassman)

143. The Martins incorporate by reference paragraphs 1 through 142 above.

144. The Martins entered into individual contracts with the CrossFit Kids affiliates.

145. CrossFit and Glassman knew of the contracts between the Martins and the CrossFit Kids affiliates.

146. CrossFit and Glassman intended to disrupt these contracts so that they could wrest control of the CrossFit Kids program from the Martins and capture the revenue associated with that program.

147. CrossFit and Glassman disrupted these contracts by deceiving the Martins into disbanding the CrossFit Kids affiliate program, which they did by promising to replace the revenue the Martins would lose from affiliate fees, and promising them a share of the advertising and promotions revenue CrossFit earned from CrossFit Kids; and by failing to disclose that their actual motivation in disbanding the CrossFit Kids affiliate program was to wrest control of CrossFit Kids from the Martins and obtain the profits from the Reebok merchandising deal for themselves.

148. CrossFit's and Glassman's conduct prevented performance and destroyed the value of the CrossFit Kids affiliate contracts.

149. The Martins were harmed by CrossFit's and Glassman's conduct, because they were deprived of the CrossFit Kids affiliate fees and lost control of the day-to-day operations of the CrossFit Kids program, which benefited their reputation. CrossFit's and Glassman's conduct was a substantial factor in causing the Martins' harm.

150. Because CrossFit and Glassman knew their statements were false, and knew that their intent was to wrest control of the CrossFit Kids program from the Martins, they acted with malice, oppression, and fraud sufficient to support an award of punitive damages.

Fifteenth Cause of Action

Intentional Interference with Prospective Economic Relations

(Against CrossFit and Glassman)

151. The Martins incorporate by reference paragraphs 1 through 150 above.

152. The Martins and actual and potential CrossFit Kid affiliates and CrossFit Kids trainers were in economic relationships that would have resulted in economic benefit to the Martins.

153. CrossFit and Glassman knew of the relationships between the Martins and the actual and potential CrossFit Kids affiliates and CrossFit Kids trainers.

154. CrossFit and Glassman intended to disrupt these relationships by deceiving the Martins into disbanding the CrossFit Kids affiliate program, which they did by promising to replace the revenue the Martins would lose from affiliate fees, and promising them a share of the advertising and promotions revenue CrossFit earned from CrossFit Kids; and by failing to disclose that their actual motivation in disbanding the CrossFit Kids affiliate program was to wrest control of CrossFit Kids from the Martins and obtain the profits from the Reebok merchandising deal for themselves. Once the Martins had disbanded the CrossFit Kids affiliate program, CrossFit and Glassman intended to disrupt the Martins' relationship with actual and potential CrossFit Kids trainers by using the economic duress created by the loss of the CrossFit Kids' affiliate revenue to force the Martins to give up a significant share of the net profit from the CrossFit Kids training seminars and yield partial control over the day-to-day operations of the CrossFit Kids program. When the Martins insisted on enforcing their rights, CrossFit and Glassman terminated them.

155. The economic relationships between the Martins and actual and potential CrossFit Kids affiliates and trainers have been disrupted, because the CrossFit Kids affiliate program was disbanded, the Martins have been deprived of the revenues from the CrossFit Kids training

1 seminars, and the Martins have been pushed out of the day-to-day operations of the CrossFit Kids
2 program.

3 156. CrossFit's and Glassman's conduct has prevented performance and destroyed the
4 value of the actual and potential CrossFit Kids affiliate relationships and actual and potential
5 trainer relationships.

6 157. The Martins were harmed by CrossFit's and Glassman's conduct, because they
7 were deprived of the CrossFit Kids affiliate and training seminar fees and lost control of the day-
8 to-day operations of the CrossFit Kids program, which benefited their reputation. CrossFit's and
9 Glassman's conduct was a substantial factor in causing the Martins' harm.

10 158. Because CrossFit and Glassman knew their statements were false, knew that they
11 were taking advantage of the Martins' economic duress, and knew that their intent was to wrest
12 control of the CrossFit Kids program from the Martins, they acted with malice, oppression, and
13 fraud sufficient to support an award of punitive damages.

14 **Sixteenth Cause of Action**

15 **Negligent Interference with Prospective Economic Relations**

16 **(Against CrossFit and Glassman)**

17 159. The Martins incorporate by reference paragraphs 1 through 158 above.

18 160. The Martins and actual and potential CrossFit Kid affiliates and CrossFit Kids
19 trainers were in economic relationships that would have resulted in economic benefit to the
20 Martins.

21 161. CrossFit and Glassman knew or should have known of the relationships between
22 the Martins and the actual and potential CrossFit Kids affiliates and CrossFit Kids trainers.

23 162. CrossFit and Glassman knew or should have known that these relationships would
24 be disrupted if they deceived the Martins into disbanding the CrossFit Kids affiliate program and
25 took control of the operations of the CrossFit Kids program.

26 163. CrossFit and Glassman failed to act with reasonable care by deceiving the Martins
27 into disbanding the CrossFit Kids affiliate program, which they did by promising to replace the

1 revenue the Martins would lose from affiliate fees, and promising them a share of the advertising
 2 and promotions revenue CrossFit earned from CrossFit Kids; and by failing to disclose that their
 3 actual motivation in disbanding the CrossFit Kids affiliate program was to wrest control of
 4 CrossFit Kids from the Martins and obtain the profits from the Reebok merchandising deal for
 5 themselves. Once the Martins had disbanded the CrossFit Kids affiliate program, CrossFit and
 6 Glassman intended to disrupt the Martins' relationship with actual and potential CrossFit Kids
 7 trainers by using the economic duress created by the loss of the CrossFit Kids' affiliate revenue to
 8 force the Martins to give up a significant share of the net profit from the CrossFit Kids training
 9 seminars and yield partial control over the day-to-day operations of the CrossFit Kids program.
 10 When the Martins insisted on enforcing their rights, CrossFit and Glassman terminated them.

11 164. The economic relationships between the Martins and actual and potential CrossFit
 12 Kids affiliates and CrossFit Kids trainers have been disrupted, because the CrossFit Kids affiliate
 13 program was disbanded and the Martins have lost control of the operations of the CrossFit Kids
 14 program.

15 165. CrossFit's and Glassman's conduct has prevented performance and destroyed the
 16 value of the CrossFit Kids affiliate and trainer relationships.

17 166. The Martins were harmed by CrossFit's and Glassman's conduct, because they
 18 were deprived of the CrossFit Kids affiliate fees and training seminar fees. CrossFit's and
 19 Glassman's conduct was a substantial factor in causing the Martins' harm.

20 **Seventeenth Cause of Action**

21 **Defamation**

22 **(Against CrossFit)**

23 167. The Martins incorporate by reference paragraphs 1 through 166 above.

24 168. In September 2014, CrossFit representatives began telling individuals in the fitness
 25 industry (including participants at the annual CrossFit Trainers Summit in San Diego) that the
 26 Martins' interest in CrossFit and CrossFit Kids had waned and that their professional performance
 27 was subpar.

169. The individuals to whom CrossFit made these statements reasonably understood that these statements were about the Martins.

170. The individuals to whom CrossFit made these statements reasonably understood these statements to mean that the Martins were generally disqualified to operate the CrossFit Kids program, act as a CrossFit affiliate, or conduct fitness training services, and lacked the skill, diligence, and care to effectively carry out those duties.

171. CrossFit failed to use reasonable care to determine the truth or falsity of these statements, because it knew that the Martins were actively and enthusiastically involved in CrossFit and the CrossFit Kids program and conducted effective training services, and because it knew it was making these statements as retaliation for the Martins' efforts to protect their rights in their CrossFit Kids license.

172. The Martins have been harmed by CrossFit's statements, because their professional reputations were damaged; they were required to expend time and resources attempting to repair their reputations; and they experienced shame, mortification, and hurt feelings. CrossFit's statements were a substantial factor in causing these harms.

173. Because CrossFit knew that its statements were false, knew that their effect would be to harm the Martins and benefit CrossFit, and knew that it acted for the purpose of retaliating against the Martins, it acted with malice, oppression, and fraud sufficient to support an award of punitive damages.

Eighteenth Cause of Action

Conversion

(Against CrossFit and Glassman)

174. The Martins incorporate by reference paragraphs 1 through 173 above.

175. The Martins have a right to possess all materials related to the CrossFit Kids name and program, as well as the revenues associated with that name and program and, beginning in January 2011, \$500 annually from every affiliate running a CrossFit Kids program.

184. CrossFit and Glassman have received revenues from the CrossFit Kids program, including from affiliate fees, training seminars, and the Reebok merchandising deal that, owing to the Martins' rights under their CrossFit Kids license, were intended for the Martins' benefit.

185. The funds received by CrossFit and Glassman have not been used for the Martins' benefit.

186. CrossFit and Glassman have not transferred the Martins' funds to them.

Twenty-First Cause of Action

Accounting

(Against CrossFit)

187. The Martins incorporate by reference paragraphs 1 through 186 above.

188. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create, develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support from CrossFit in operating that program, and receive 80% of all revenues from the training seminars, and 100% of other all revenues attributable to that program and name. CrossFit benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand into the youth market, and revenues from the CrossFit Kids training seminars.

189. The Martins reached an agreement with CrossFit that, if the Martins disbanded the CrossFit Kids affiliate program and brought the operations of CrossFit Kids under the auspices of CrossFit, they would receive \$500 of the annual fees paid by each affiliate running a CrossFit Kids program, as well as 2% of all CrossFit advertising and sponsorship revenue, from January 2011 onwards.

190. CrossFit has received revenues associated with the CrossFit Kids program, affiliate fees, and advertising and sponsorship revenue that should have been paid to the Martins. The balance due to the Martins from CrossFit can only be ascertained by an accounting, because it depends upon the revenues received and expenses appropriately incurred under the parties' contract, and only CrossFit has access to the information regarding those revenues and expenses.

1 Despite the Martins' request, CrossFit has not provided the information necessary for the Martins
2 to perform this accounting on their own.

3 **Twenty-Second Cause of Action**

4 **Breach of Fiduciary Duty**

5 **(Against Glassman)**

6 191. The Martins incorporate by reference paragraphs 1 through 190 above.

7 192. Between mid-2004 and mid-2010, the Martins formed a close personal relationship
8 with Glassman. The Martins acted as godparents to Glassman's four children, and entrusted their
9 own child to the Glassmans when he traveled to Santa Cruz to take the CrossFit teacher training
10 course. Because of that relationship, as well as Glassman's superior knowledge of CrossFit and
11 superior success as a businessman, the Martins reposed trust in Glassman regarding the creation,
12 development, and operation of CrossFit Kids and Glassman's and CrossFit's intentions towards
13 CrossFit Kids and the Martins.

14 193. Glassman was aware of and voluntarily accepted the Martins' trust and reliance in
15 him. He thereby assumed a role as the Martins' fiduciary with respect to the CrossFit Kids
16 program, and so had a duty to act with the utmost good faith in the best interests of the Martins
17 with respect to the program.

18 194. Glassman has breached his fiduciary duty to the Martins, because he failed to act
19 with reasonable care to ensure that the Martins' interests in the CrossFit Kids name and program
20 were protected, and put his own interests in profiting from the CrossFit Kids program over his
21 duties to the Martins by deceiving them and putting them under economic duress in order to wrest
22 control of the CrossFit Kids program from them. The Martins did not give informed consent to
23 Glassman's conduct.

24 195. The Martins have been harmed, because they have not received revenues to which
25 they were entitled under the terms of the CrossFit Kids license, have disbanded the CrossFit Kids
26 affiliate program, have lost control of the day-to-day operations of the CrossFit Kids program, and
27

1 have suffered harm to their reputation. Glassman's conduct was a substantial factor in causing this
2 harm.

3 196. Because Glassman knew his statements to the Martins were false, knew that he was
4 taking advantage of the Martins' economic duress, and knew that his intent was to wrest control of
5 the CrossFit Kids program from the Martins, he acted with malice, oppression, and fraud sufficient
6 to support an award of punitive damages.

PRAYER FOR RELIEF

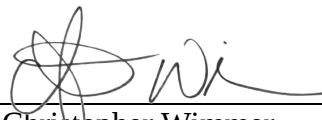
WHEREFORE, the Martins pray for:

- A. An order declaring the Martins to be the holders of an exclusive, irrevocable license to the CrossFit Kids name and program from November 2004 to November 2104;
- B. An order declaring the Martins are entitled to \$500 of the annual fees paid by each CrossFit affiliate running a CrossFit Kids program, as well as 2% of all CrossFit advertising and sponsorship revenue, from January 2011 onwards;
- C. Compensatory damages in an amount to be determined at trial, but well in excess of the jurisdictional minimum of this Court;
- D. Imposition of a constructive trust over 80% of the revenues from the CrossFit Kids training seminars and 100% of all other revenues associated with the CrossFit Kids program; all CrossFit Kids materials; \$500 of the annual fees paid by each CrossFit affiliate running a CrossFit Kids program; and 2% of all CrossFit advertising and sponsorship revenue from January 2011 onwards in CrossFit's or Glassman's possession;
- E. An accounting;
- F. Punitive damages in an amount to be determined at trial;
- G. Their reasonable attorneys' fees and costs of suit;
- H. Pre- and post-judgment interest; and
- I. Such other relief as this Court deems just and proper.

Respectfully submitted,

Dated: December 3, 2014

EMERGENT LEGAL

By: 
Christopher Wimmer

Attorneys for Defendants and Counterclaimants
JEFF MARTIN, MIKKI LEE MARTIN, BRAND X
MARTIAL ARTS, and CROSSFIT BRAND X, INC.

ANSWER

1
2 1. Defendants and Counterclaimants Jeff Martin (“Jeff”), Mikki Lee Martin
3 (“Mikki”), and Brand X Martial Arts (“Brand X,” and together with Jeff and Mikki, “the Martins”)
4 deny the allegations in paragraph 1 of the Complaint.

5 2. The Martins lack information sufficient to form a definite belief regarding the
6 allegations in paragraph 2 of the Complaint, and so deny those allegations and demand proof of
7 them.

8 3. The Martins lack information sufficient to form a definite belief regarding the
9 allegations in paragraph 3 of the Complaint, and so deny those allegations and demand proof of
10 them.

11 4. The Martins admit that CrossFit, Inc. (“CrossFit”) originated in the United States,
12 but lack information sufficient to form a definite belief regarding the remaining allegations in
13 paragraph 4 of the Complaint, and so deny those allegations and demand proof of them.

14 5. The Martins admit that CrossFit disseminates workout information through
15 crossfit.com, but lack information sufficient to form a definite belief regarding the remaining
16 allegations in paragraph 5 of the Complaint, and so deny those allegations and demand proof of
17 them.

18 6. The Martins admit that they reside in Ramona, California; that Mikki operates a
19 CrossFit affiliate named CrossFit Brand X under a CrossFit Affiliate Agreement; and that the
20 Martins operate crossfitkids.com. The Martins deny the remaining allegations in paragraph 6 of
21 the Complaint.

22 7. The Martins deny the allegations in paragraph 7 of the Complaint.

23 8. The Martins deny the allegations in paragraph 8 of the Complaint.

24 9. The Martins admit that Jeff executed a CrossFit Trade Name License Agreement on
25 behalf of Brand X in August 2004 and that Mikki executed a CrossFit Affiliate Agreement in
26 November 2012. The Martins deny the remaining allegations in paragraph 9 of the Complaint.
27

1 10. The Martins admit they are married, but deny the remaining allegations in
2 paragraph 10 of the Complaint.

3 11. The Martins deny the allegations in paragraph 11 of the Complaint.

4 12. The Martins aver that the allegations in paragraph 12 of the Complaint are legal
5 conclusions to which no response is required.

6 13. The Martins aver that the allegations in paragraph 13 of the Complaint are legal
7 conclusions to which no response is required.

8 14. The Martins aver that the allegations in paragraph 14 of the Complaint are legal
9 conclusions to which no response is required.

10 15. The Martins aver that the allegations in paragraph 15 of the Complaint are legal
11 conclusions to which no response is required.

12 16. The Martins admit that CrossFit provides a fitness program for strength and
13 conditioning, but deny the remaining allegations in paragraph 16 of the Complaint.

14 17. The Martins admit that the CrossFit trademark is registered with the United States
15 Patent and Trademark Office, but lack information sufficient to form a definite belief regarding
16 the remaining allegations in paragraph 17 of the Complaint, and so deny those allegations and
17 demand proof of them.

18 18. The Martins lack information sufficient to form a definite belief regarding the
19 allegations in paragraph 18 of the Complaint, and so deny those allegations and demand proof of
20 them.

21 19. The Martins admit that CrossFit offers training courses and operates an affiliate
22 program, but lack information sufficient to form a definite belief regarding the remaining
23 allegations in paragraph 19 of the Complaint, and so deny those allegations and demand proof of
24 them.

25 20. The Martins admit that Mikki is licensed to operate a gym named CrossFit Brand
26 X, but lack information sufficient to form a definite belief regarding the remaining allegations in
27 paragraph 20 of the Complaint, and so deny those allegations and demand proof of them.

1 21. The Martins lack information sufficient to form a definite belief regarding the
2 allegations in paragraph 21 of the Complaint, and so deny those allegations and demand proof of
3 them.

4 22. The Martins lack information sufficient to form a definite belief regarding the
5 allegations in paragraph 22 of the Complaint, and so deny those allegations and demand proof of
6 them.

7 23. The Martins lack information sufficient to form a definite belief regarding the
8 allegations in paragraph 23 of the Complaint, and so deny those allegations and demand proof of
9 them.

10 24. The Martins admit that Jeff executed a CrossFit Trade Name License Agreement in
11 August 2004 on behalf of Brand X, but aver that the agreement is the best evidence of its contents,
12 and so deny the remaining allegations in paragraph 24 of the Complaint.

13 25. The Martins admit that Mikki executed the CrossFit Affiliate Agreement attached
14 as Exhibit A to the Complaint, but aver that the agreement is the best evidence of its contents, and
15 so deny the remaining allegations in paragraph 25 of the Complaint.

16 26. The Martins admit that Mikki executed the CrossFit Affiliate Agreement attached
17 as Exhibit A to the Complaint, but aver that the agreement is the best evidence of its contents, and
18 so deny the remaining allegations in paragraph 26 of the Complaint.

19 27. The Martins admit that neither they nor CrossFit has terminated the Affiliate
20 Agreement, but aver that the remaining allegations in paragraph 27 of the Complaint are legal
21 conclusions to which no response is required.

22 28. The Martins admit that CrossFit operates specialty courses, and that written
23 materials are sometimes used in connection with those specialty courses. The Martins deny that
24 CrossFit owns the CrossFit Kids Trainer Course. The Martins lack information sufficient to form
25 a definite belief regarding the remaining allegations in paragraph 28 of the Complaint, and so deny
26 those allegations and demand proof of them.

27

1 29. The Martins admit that in late 2004 they created the CrossFit Kids program under a
2 100-year exclusive, irrevocable license from CrossFit and its founder, Greg Glassman; that
3 CrossFit Kids is a method for teaching CrossFit principles to children; and that the Trade Name
4 License Agreement executed by Jeff predates the Martins' CrossFit Kids license. The Martins
5 deny the remaining allegations in paragraph 29 of the Complaint.

6 30. The Martins admit that in late 2004 they created the CrossFit Kids program under
7 their CrossFit Kids license. The Martins deny the remaining allegations in paragraph 30 of the
8 Complaint.

9 31. The Martins admit that, exercising their rights under their CrossFit Kids license,
10 they registered crossfitkids.com and in September 2007 began to publish content for that website.
11 The Martins deny the remaining allegations in paragraph 31 of the Complaint.

12 32. The Martins admit that, exercising their rights under their CrossFit Kids license, in
13 2008 they developed and began to sell school plans and conducting seminars, and that the CrossFit
14 Kids seminars appeared on the crossfit.com website. The Martins deny the remaining allegations
15 in paragraph 32 of the Complaint.

16 33. The Martins admit that, exercising their rights under their CrossFit Kids license, in
17 2008 they began to offer a CrossFit Kids affiliation that permitted CrossFit affiliates to use the
18 trade name "CrossFit Kids," and admit that they received the revenues from those affiliations.
19 The Martins deny the remaining allegations in paragraph 33 of the Complaint.

20 34. The Martins admit that, exercising their rights under their CrossFit Kids license,
21 they sell a CrossFit Kids curriculum through crossfitkids.com and, pursuant to that same license,
22 do not share the proceeds from those sales with CrossFit. The Martins deny the remaining
23 allegations in paragraph 34 of the Complaint.

24 35. The Martins admit that, exercising their rights under their CrossFit Kids license, in
25 March 2009 they discussed with CrossFit the possibility of forming a new corporation using the
26 name "CrossFit Kids" to operate the CrossFit Kids program; that Dale Saran, CrossFit's General
27 Counsel, recommended that the Martins incorporate using a name other than "CrossFit Kids," and

1 then do business as “CrossFit Kids”; and that they ultimately incorporated CrossFit Brand X, Inc.,
2 which did business as “CrossFit Kids.” The Martins deny the remaining allegations in paragraph
3 35 of the Complaint.

4 36. The Martins admit that they discontinued the CrossFit Kids affiliation in September
5 2010, but deny the remaining allegations in paragraph 36 of the Complaint.

6 37. The Martins admit that they became employees of CrossFit around January 2011
7 and began to receive a salary from CrossFit for their management of the CrossFit Kids program;
8 that CrossFit began to offer CrossFit Kids training courses in early 2011; and that the Martins
9 briefly received some proceeds from those training courses. The Martins deny the remaining
10 allegations in paragraph 37 of the Complaint.

11 38. The Martins admit that in 2011 they discussed with CrossFit their displeasure with
12 their treatment by CrossFit; that around May 2011 CrossFit doubled their salaries; and that in 2011
13 CrossFit ceased to share profits from the CrossFit Kids training courses with them. The Martins
14 deny the remaining allegations in paragraph 38 of the Complaint.

15 39. The Martins admit that they have not received any profits from the CrossFit Kids
16 training courses since even before May 1, 2011. The Martins deny the remaining allegations in
17 paragraph 39 of the Complaint.

18 40. The Martins admit the allegations in paragraph 40 of the Complaint.

19 41. The Martins admit that, since March 2014, they have not transferred
20 crossfitkids.com or any other property related to the CrossFit Kids program to CrossFit, but deny
21 the remaining allegations in paragraph 41 of the Complaint.

22 42. The Martins admit that they have accurately stated to CrossFit that, under their
23 CrossFit Kids license, they founded and created CrossFit Kids and own the content and the
24 copyright to all materials and work bearing the CrossFit Kids name. The Martins deny the
25 remaining allegations in paragraph 42 of the Complaint.

26 43. The Martins deny the allegations in paragraph 43 of the Complaint.

27 44. The Martins deny the allegations in paragraph 44 of the Complaint.

45. The Martins deny the allegations in paragraph 45 of the Complaint.

46. The Martins deny the allegations in paragraph 46 of the Complaint.

47. The Martins admit that CrossFit has demanded that they give to CrossFit material bearing the CrossFit Kids name, but deny the remaining allegations in paragraph 47 of the Complaint.

48. The Martins admit that they have refused to give CrossFit property created by the Martins under their CrossFit Kids license; have affirmed their rights under that agreement; and have discussed with CrossFit their willingness to sell their rights under that agreement to CrossFit. The Martins deny the remaining allegations in paragraph 48 of the Complaint.

49. The Martins incorporate by reference paragraphs 1 through 48 above.

50. The Martins admit that Mikki executed the CrossFit Affiliate Agreement attached as Exhibit A to the Complaint, but deny the remaining allegations in paragraph 50 of the Complaint.

51. The Martins deny the allegations in paragraph 51 of the Complaint.

52. The Martins deny the allegations in paragraph 52 of the Complaint.

53. The Martins deny the allegations in paragraph 53 of the Complaint.

54. The Martins deny the allegations in paragraph 54 of the Complaint.

55. The Martins incorporate by reference paragraphs 1 through 54 above.

56. The Martins deny the allegations in paragraph 56 of the Complaint.

57. The Martins deny the allegations in paragraph 57 of the Complaint.

58. The Martins deny the allegations in paragraph 58 of the Complaint.

59. The Martins deny the allegations in paragraph 59 of the Complaint.

60. The Martins deny any allegations in the Complaint not expressly admitted above, and deny that CrossFit is entitled to any relief.

AFFIRMATIVE DEFENSES

61. The Martins assert the affirmative defenses below without conceding that they bear the burden of proof on any of those defenses.

First Affirmative Defense

(Consent and Acquiescence—All Claims)

62. CrossFit cannot prevail on its claims against the Martins because it consented to and acquiesced in the conduct alleged in its Complaint.

63. CrossFit granted to the Martins a 100-year exclusive, irrevocable license to create, develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support from CrossFit in operating that program, and receive all revenues associated with that program (and, beginning in 2010, to receive \$1,000 annually from each CrossFit affiliate worldwide). CrossFit benefited from this arrangement by receiving wider promotion of its brand and expansion of its brand into the youth market.

64. With CrossFit's knowledge, acquiescence, and encouragement, the Martins launched the CrossFit Kids program in 2004; began issuing CrossFit Kids workouts of the day that year; began publishing the CrossFit Kids Journal in December 2005; published content to crossfitkids.typepad.com, crossfitkids.blogspot.com, and crossfitkids.com; developed a CrossFit Kids knowledge base, network, best practices, and curriculum; began teaching CrossFit Kids training courses and issuing certifications in 2008; and continuously operated the CrossFit Kids program until October 2014, when CrossFit terminated them. These same activities now form the basis for CrossFit's complaint.

65. Not until March 2014 did CrossFit object to the Martins' operation of the CrossFit Kids program, use of the CrossFit Kids name, or rights under their CrossFit Kids license.

66. The doctrine of consent and acquiescence thus bars CrossFit's claims.

Second Affirmative Defense

(Waiver—All Claims)

67. CrossFit cannot prevail on its claims against the Martins because it waived any right to complain about the conduct alleged in its Complaint.

68. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create, develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support

1 from CrossFit in operating that program, and receive 80% of all revenues from the training
 2 seminars, and 100% of other all revenues attributable to that program and name. CrossFit
 3 benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand
 4 into the youth market, and revenues from the CrossFit Kids training seminars.

5 69. With CrossFit's knowledge, acquiescence, and encouragement, the Martins
 6 launched the CrossFit Kids program in 2004; began issuing CrossFit Kids workouts of the day that
 7 year; began publishing the CrossFit Kids Journal in December 2005; published content to
 8 crossfitkids.typepad.com, crossfitkids.blogspot.com, and crossfitkids.com; developed a CrossFit
 9 Kids knowledge base, network, best practices, and curriculum; began teaching CrossFit Kids
 10 training courses and issuing certifications in 2008; and continuously operated the CrossFit Kids
 11 program until October 2014, when CrossFit terminated them. These same activities now form the
 12 basis for CrossFit's complaint.

13 70. CrossFit had the opportunity to exercise any rights it had to prevent the Martins
 14 from using the term "CrossFit Kids" or operating the CrossFit Kids program, and was actually or
 15 constructively aware of that opportunity. CrossFit deliberately failed to exercise those rights
 16 because it was aware that the Martins were operating under their CrossFit Kids license and
 17 because CrossFit benefited from the CrossFit Kids program.

18 71. Not until March 2014 did CrossFit object to the Martins' operation of the CrossFit
 19 Kids program, use of the CrossFit Kids name, or rights under the CrossFit Kids License
 20 Agreement.

21 72. The doctrine of waiver thus bars CrossFit's claims.

22 **Third Affirmative Defense**

23 **(Estoppel—All Claims)**

24 73. CrossFit cannot prevail on its claims against the Martins because it is estopped
 25 from complaining about the conduct alleged in its Complaint.

26 74. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create,
 27 develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support

1 from CrossFit in operating that program, and receive 80% of all revenues from the training
 2 seminars, and 100% of other all revenues attributable to that program and name. CrossFit
 3 benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand
 4 into the youth market, and revenues from the CrossFit Kids training seminars.

5 75. With CrossFit's knowledge, acquiescence, and encouragement, the Martins
 6 launched the CrossFit Kids program in 2004; began issuing CrossFit Kids workouts of the day that
 7 year; began publishing the CrossFit Kids Journal in December 2005; published content to
 8 crossfitkids.typepad.com, crossfitkids.blogspot.com, and crossfitkids.com; developed a CrossFit
 9 Kids knowledge base, network, best practices, and curriculum; began teaching CrossFit Kids
 10 training courses and issuing certifications in 2008; and continuously operated the CrossFit Kids
 11 program until October 2014, when CrossFit terminated them. These same activities now form the
 12 basis for CrossFit's complaint.

13 76. CrossFit intended for the Martins to rely on their CrossFit Kids license and
 14 CrossFit's longstanding encouragement of their activities, because it benefited from the CrossFit
 15 Kids program. Until March 2014, when CrossFit first objected to the Martins' operation of the
 16 CrossFit Kids program, use of the CrossFit Kids name, and rights under their CrossFit Kids
 17 license, the Martins were unaware that CrossFit held the view that it, not they, held the rights to
 18 the CrossFit Kids name and program. The Martins have been injured by their reliance, because
 19 they have expended money, time, and effort, and forewent other opportunities, in order to develop
 20 the CrossFit Kids program.

21 77. The doctrine of estoppel thus bars CrossFit's claims.

22 **Fourth Affirmative Defense**

23 **(Unclean Hands—All Claims)**

24 78. CrossFit cannot prevail on its claims against the Martins because its unclean hands
 25 with respect to the CrossFit Kids program bar it from complaining about the conduct alleged in its
 26 Complaint.

1 79. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create,
2 develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support
3 from CrossFit in operating that program, and receive 80% of all revenues from the training
4 seminars, and 100% of other all revenues attributable to that program and name. CrossFit
5 benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand
6 into the youth market, and revenues from the CrossFit Kids training seminars.

7 80. With CrossFit's knowledge, acquiescence, and encouragement, the Martins
8 launched the CrossFit Kids program in 2004; began issuing CrossFit Kids workouts of the day that
9 year; began publishing the CrossFit Kids Journal in December 2005; published content to
10 crossfitkids.typepad.com, crossfitkids.blogspot.com, and crossfitkids.com; developed a CrossFit
11 Kids knowledge base, network, best practices, and curriculum; began teaching CrossFit Kids
12 training courses and issuing certifications in 2008; and continuously operated the CrossFit Kids
13 program until October 2014, when CrossFit terminated them. These same activities now form the
14 basis for CrossFit's complaint.

15 81. Until 2009, the Martins lost money every year, liquidated their retirement accounts
16 to keep the program afloat, and abandoned their other course offerings (Krav Maga, self-defense,
17 kickboxing, and Kenpo) to focus exclusively on CrossFit Kids. All along the way, Glassman
18 encouraged the Martins down the path—telling them they should “go all in,” and affirming time
19 and again that CrossFit Kids belonged to them for 100 years.

20 82. Glassman was motivated at least in part by self-interest. As he explained to the
21 Martins in a 2007 voicemail, the CrossFit Kids program was “building that future generation of
22 crossfitters,” and a close integration between CrossFit and CrossFit Kids “would expand the kind
23 of global empire” and “drive traffic to the CrossFit [web]site.” Glassman also pushed for a close
24 integration of his and the Martins' personal lives. He made them the godparents of his four
25 children, and asked the Martins to move from California to Arizona to live closer to them.

26 83. By 2010, Glassman's self-interest had turned to avarice. CrossFit Kids was
27 growing rapidly, and finally turning a profit. Its training seminars were booked, with new ones

1 being added monthly; its affiliate gym program had more than 200 members and was expanding
2 geometrically. Sensing the program's potential, and eager to capture the revenue it would
3 generate—including from a then-secret deal with Reebok—Glassman began a series of
4 machinations that would ultimately deprive the Martins of the fruits of their years of labor.

5 84. First, Glassman asked them to bring CrossFit Kids “under the CrossFit umbrella”
6 and integrate the program completely into “CrossFit HQ.” Next, he told them they should disband
7 the CrossFit Kids affiliate program and allow CrossFit to set the schedule for the CrossFit Kids
8 training seminars. Once the Martins had done so—eliminating one income stream entirely, and
9 placing the other in CrossFit's control—Glassman used the Martins' economic dependence to
10 force them to give up the lion's share of the revenue from the CrossFit Kids program under a
11 “transition agreement.” CrossFit almost immediately breached that agreement, refusing to pay the
12 Martins their share of revenue and manipulating the accounting for the training seminars so that it
13 appeared the Martins were taking a loss, when they should have been making a profit.

14 85. Throughout this maneuvering, Glassman led the Martins to believe he was looking
15 out for their interests: He affirmed that CrossFit Kids was theirs “forever,” and foreswore any
16 interest in taking the business away from them. He promised he would make them wealthy
17 enough for several lifetimes by increasing CrossFit's affiliate fees and giving the Martins a share
18 of those fees. He called them “brother” and “family” and told them he loved them.

19 86. Once CrossFit Kids was fully integrated into CrossFit, Glassman cut off almost all
20 communications with the Martins. This made it impossible for the Martins to address their
21 concerns about the handling of the CrossFit Kids program and CrossFit's failure to share the
22 program's revenue with them. When they spoke to other CrossFit personnel, they were told that
23 only Glassman could answer their questions, but that he was unavailable (as he often was for
24 weeks at a time), or unable to focus on them because of the company's other demands, or going
25 through a difficult time because of his divorce from CrossFit cofounder Lauren Glassman, or
26 simply not in the right mindset. Trusting Glassman and sympathetic to his struggles, the Martins
27 forbore.

1 87. In early 2014, as the Martins began to press CrossFit for information about the
 2 revenues they should have been earning from the CrossFit affiliate fees and other sources, the truth
 3 about CrossFit's and Glassman's plan finally came out. The company began to take the position
 4 that the Martins had no rights to the CrossFit Kids name and program, and were simply at will
 5 employees. It demanded that the Martins turn over their crossfitkids.com website and give up
 6 their rights to CrossFit Kids—and then, after stalling negotiations over a possible buyout,
 7 suddenly fired them both and brought this trademark infringement suit against them, claiming that
 8 the Martins were (after 10 years of open use) violating CrossFit's trademarks by maintaining the
 9 CrossFit Kids website.

10 88. The doctrine of unclean hands thus bars CrossFit's claims.

11 **Fifth Affirmative Defense**

12 **(Fraud—All Claims)**

13 89. CrossFit cannot prevail on its claims against the Martins because it engaged in
 14 fraud with respect to the CrossFit Kids program on which it bases its Complaint.

15 90. Between mid-2004 and mid-2010, the Martins formed a close personal relationship
 16 with Glassman. The Martins acted as godparents to Glassman's four children, and entrusted their
 17 own child to the Glassmans when he traveled to Santa Cruz to take the CrossFit teacher training
 18 course. Because of that relationship, as well as Glassman's superior knowledge of CrossFit and
 19 superior success as a businessman, the Martins reposed trust in Glassman regarding the creation,
 20 development, and operation of CrossFit Kids and Glassman's and CrossFit's intentions towards
 21 CrossFit Kids and the Martins.

22 91. Glassman was aware of and voluntarily accepted the Martins' trust and reliance in
 23 him. He thereby assumed a role as the Martins' fiduciary with respect to the CrossFit Kids
 24 program, and so had a duty to act with the utmost good faith in the best interests of the Martins
 25 with respect to the program and disclose to them all important facts regarding their relationship.

26 92. In 2010, Glassman, individually and as a representative of CrossFit, asked the
 27 Martins to integrate CrossFit Kids with CrossFit and disband the CrossFit Kids affiliate program.

1 In exchange, Glassman promised CrossFit would share with the Martins \$500 of the annual fees
2 paid by each affiliate running a CrossFit Kids program, as well as 2% of all CrossFit advertising
3 and sponsorship revenue, from January 2011 onwards.

4 93. In making these statements to the Martins, Glassman concealed that CrossFit was
5 concurrently negotiating a partnership with Reebok; that his motivation for asking the Martins to
6 integrate the CrossFit Kids program into CrossFit and disband the CrossFit Kids affiliate program
7 was to take control of CrossFit Kids and the associated intellectual property and revenue; and that
8 he and CrossFit had no intention of paying the Martins the promised profits.

9 94. Glassman and CrossFit were aware that Glassman's statements were false and
10 failed to disclose important facts, and were aware of Glassman's actual motivation, plan, and
11 intentions, as well as of the Reebok deal. The Martins were not.

12 95. Glassman and CrossFit intended for the Martins to rely on Glassman's statements,
13 and intended to deceive the Martins by concealing important facts.

14 96. The Martins reasonably relied on Glassman's and CrossFit's statements and
15 omissions.

16 97. The Martins were harmed by Glassman's and CrossFit's fraud, because they
17 disbanded the CrossFit Kids affiliate program and gave up the associated revenue; and because
18 they gave Glassman and CrossFit greater control over the CrossFit Kids program, which Glassman
19 and CrossFit have used to deprive the Martins of revenues which they should have received and of
20 the opportunity to operate the CrossFit Kids program they built. Glassman's and CrossFit's fraud
21 was a substantial factor in causing the Martins' harm.

22 98. The doctrine of fraud thus bars CrossFit's claims.

23 **Sixth Affirmative Defense**

24 **(Lack of Consideration—Contract Claim)**

25 99. CrossFit cannot prevail on its claims against the Martins because, if the Affiliate
26 Agreement on which CrossFit bases its claims is given the reading advanced by CrossFit, that
27 agreement lacks consideration.

100. CrossFit suggests by its Complaint that the 2012 Affiliate Agreement subsumed the Martins' rights in the CrossFit Kids license. That reading is implausible, because the Affiliate Agreement says nothing about the CrossFit Kids license or term, and because CrossFit both before and after the execution of the Affiliate Agreement acknowledged that the Martins held a license to the CrossFit Kids name independent of their status as affiliates.

101. If the Affiliate Agreement were read as CrossFit suggests, it would lack consideration, because the Martins would have given up significant rights without any concomitant gain to them or detriment to CrossFit.

102. The doctrine of lack of consideration thus bars CrossFit's claims.

Seventh Affirmative Defense

(Mistake—All Claims)

103. CrossFit cannot prevail on its claims against the Martins because, if the Affiliate Agreement on which CrossFit bases its claims is given the reading advanced by CrossFit, that agreement was based on a unilateral mistake.

104. CrossFit suggests by its Complaint that the 2012 Affiliate Agreement subsumed the Martins' rights in the CrossFit Kids license. That reading is implausible, because the Affiliate Agreement says nothing about the CrossFit Kids license or term, and because CrossFit both before and after the execution of the Affiliate Agreement acknowledged that the Martins held a license to the CrossFit Kids name independent of their status as affiliates.

105. If the Affiliate Agreement were read as CrossFit suggests, it would be the product of the Martins' unilateral mistake, because they did not understand that by executing it they were giving up their rights in the CrossFit Kids license. CrossFit was aware that the Martins believed the Affiliate Agreement had no impact on their CrossFit Kids license, because the company had frequently affirmed that they were "different" from other affiliates by virtue of their role as founders of CrossFit Kids. CrossFit did not disclose to the Martins that it believed the Affiliate Agreement affected the Martins' CrossFit Kids license in order to take advantage of them.

106. The doctrine of mistake thus bars CrossFit's claims.

Eighth Affirmative Defense

(Unconscionability—All Claims)

107. CrossFit cannot prevail on its claims against the Martins because, if the Affiliate Agreement on which CrossFit bases its claims is given the reading advanced by CrossFit, that agreement is unconscionable.

108. CrossFit suggests by its Complaint that the 2012 Affiliate Agreement subsumed the Martins' rights in the CrossFit Kids license. That reading is implausible, because the Affiliate Agreement says nothing about the CrossFit Kids license or term, and because CrossFit both before and after the execution of the Affiliate Agreement acknowledged that the Martins held a license to the CrossFit Kids name independent of their status as affiliates.

109. If the Affiliate Agreement were read as CrossFit suggests, it would be both procedurally and substantively unconscionable, because the Martins would have given up significant rights without any concomitant gain to them or detriment to CrossFit, CrossFit would have concealed its intent regarding the Affiliate Agreement, and the agreement would have been the result of fraud and duress on the part of CrossFit.

110. The doctrine of unconscionability thus bars CrossFit's claims.

Ninth Affirmative Defense

(Undue Influence—All Claims)

111. CrossFit cannot prevail on its claims against the Martins because it exercised undue influence over the Martins with respect to the CrossFit Kids program on which it bases its Complaint.

112. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create, develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support from CrossFit in operating that program, and receive 80% of all revenues from the training seminars, and 100% of other all revenues attributable to that program and name. CrossFit benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand into the youth market, and revenues from the CrossFit Kids training seminars.

1 113. With CrossFit’s knowledge, acquiescence, and encouragement, the Martins
2 launched the CrossFit Kids program in 2004; began issuing CrossFit Kids workouts of the day that
3 year; began publishing the CrossFit Kids Journal in December 2005; published content to
4 crossfitkids.typepad.com, crossfitkids.blogspot.com, and crossfitkids.com; developed a CrossFit
5 Kids knowledge base, network, best practices, and curriculum; began teaching CrossFit Kids
6 training courses and issuing certifications in 2008; and continuously operated the CrossFit Kids
7 program until October 2014, when CrossFit terminated them.

8 114. Between mid-2004 and mid-2010, the Martins formed a close personal relationship
9 with Glassman. The Martins acted as godparents to Glassman’s four children, and entrusted their
10 own child to the Glassmans when he traveled to Santa Cruz to take the CrossFit teacher training
11 course. Because of that relationship, as well as Glassman’s superior knowledge of CrossFit and
12 superior success as a businessman, the Martins reposed trust in Glassman regarding the creation,
13 development, and operation of CrossFit Kids and Glassman’s and CrossFit’s intentions towards
14 CrossFit Kids and the Martins.

15 115. Glassman was aware of and voluntarily accepted the Martins’ trust and reliance in
16 him. He thereby assumed a role as the Martins’ fiduciary with respect to the CrossFit Kids
17 program, and so had a duty to act with the utmost good faith in the best interests of the Martins
18 with respect to the program and disclose to them all important facts regarding their relationship.

19 116. By 2010, CrossFit Kids was growing rapidly, and finally turning a profit. Its
20 training seminars were booked, with new ones being added monthly; its affiliate gym program had
21 more than 200 members and was expanding geometrically. Sensing the program’s potential, and
22 eager to capture the revenue it would generate—including from a then-secret deal with Reebok—
23 Glassman began a series of machinations that would ultimately deprive the Martins of the fruits of
24 their years of labor.

25 117. First, Glassman asked them to bring CrossFit Kids “under the CrossFit umbrella”
26 and integrate the program completely into “CrossFit HQ.” Next, he told them they should disband
27 the CrossFit Kids affiliate program and allow CrossFit to set the schedule for the CrossFit Kids

1 training seminars. Once the Martins had done so—eliminating one income stream entirely, and
 2 placing the other in CrossFit’s control—Glassman used the Martins’ economic dependence to
 3 force them to give up the lion’s share of the revenue from the CrossFit Kids program under a
 4 “transition agreement.” CrossFit almost immediately breached that agreement, refusing to pay the
 5 Martins their share of revenue and manipulating the accounting for the training seminars so that it
 6 appeared the Martins were taking a loss, when they should have been making a profit.

7 118. Throughout this maneuvering, Glassman led the Martins to believe he was looking
 8 out for their interests: He affirmed that CrossFit Kids was theirs “forever,” and foreswore any
 9 interest in taking the business away from them. He promised he would make them wealthy
 10 enough for several lifetimes by increasing CrossFit’s affiliate fees and giving the Martins a share
 11 of those fees. He called them “brother” and “family” and told them he loved them.

12 119. If the Martins gave up any rights to the CrossFit Kids license, it was only as a result
 13 of the undue influence exercised over them by Glassman, CrossFit’s owner.

14 120. The doctrine of undue influence thus bars CrossFit’s claims.

15 **Tenth Affirmative Defense**

16 **(Duress—All Claims)**

17 121. CrossFit cannot prevail on its claims against the Martins because it placed them
 18 under duress with respect to the CrossFit Kids program on which it bases its Complaint.

19 122. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create,
 20 develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support
 21 from CrossFit in operating that program, and receive 80% of all revenues from the training
 22 seminars, and 100% of other all revenues attributable to that program and name. CrossFit
 23 benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand
 24 into the youth market, and revenues from the CrossFit Kids training seminars.

25 123. By 2010, CrossFit Kids was growing rapidly, and finally turning a profit. Its
 26 training seminars were booked, with new ones being added monthly; its affiliate gym program had
 27 more than 200 members and was expanding geometrically. Sensing the program’s potential, and

1 eager to capture the revenue it would generate—including from a then-secret deal with Reebok—
 2 Glassman began a series of machinations that would ultimately deprive the Martins of the fruits of
 3 their years of labor.

4 124. First, Glassman asked them to bring CrossFit Kids “under the CrossFit umbrella”
 5 and integrate the program completely into “CrossFit HQ.” Next, he told them they should disband
 6 the CrossFit Kids affiliate program and allow CrossFit to set the schedule for the CrossFit Kids
 7 training seminars. Once the Martins had done so—eliminating one income stream entirely, and
 8 placing the other in CrossFit’s control—Glassman used the Martins’ economic dependence to
 9 force them to give up the lion’s share of the revenue from the CrossFit Kids program under a
 10 “transition agreement.” CrossFit almost immediately breached that agreement, refusing to pay the
 11 Martins their share of revenue and manipulating the accounting for the training seminars so that it
 12 appeared the Martins were taking a loss, when they should have been making a profit.

13 125. If the Martins gave up any rights to the CrossFit Kids license, it was only as a result
 14 of the duress under which they were placed by CrossFit.

15 126. The doctrine of duress thus bars CrossFit’s claims.

16 **Eleventh Affirmative Defense**

17 **(Laches—Lanham Act Claim)**

18 127. CrossFit may not assert claims for infringement, false designation, or dilution of its
 19 trademarks or service marks because it has delayed unreasonably in seeking to enforce any rights
 20 it may have.

21 128. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create,
 22 develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support
 23 from CrossFit in operating that program, and receive 80% of all revenues from the training
 24 seminars, and 100% of other all revenues attributable to that program and name. CrossFit
 25 benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand
 26 into the youth market, and revenues from the CrossFit Kids training seminars.

129. With CrossFit's knowledge, acquiescence, and encouragement, the Martins launched the CrossFit Kids program in 2004; began issuing CrossFit Kids workouts of the day that year; began publishing the CrossFit Kids Journal in December 2005; published content to crossfitkids.typepad.com, crossfitkids.blogspot.com, and crossfitkids.com; developed a CrossFit Kids knowledge base, network, best practices, and curriculum; began teaching CrossFit Kids training courses and issuing certifications in 2008; and continuously operated the CrossFit Kids program until October 2014, when CrossFit terminated them.

130. Not until March 2014 did CrossFit take the position that the Martins did not hold a license to use the CrossFit Kids name and operate the CrossFit Kids program, and not until October 2014 did CrossFit file this action claiming that the Martins were infringing its trademarks by operating the CrossFit Kids program. This delay was unreasonable, because CrossFit was aware of the Martins' allegedly infringing conduct, and deliberately allowed it to continue.

131. The Martins have been prejudiced by CrossFit's ten-year delay, because evidence regarding the grant of the CrossFit Kids license to the Martins will have been lost through the destruction of relevant email and the fading of percipient witness memories. In addition, the Martins relied on CrossFit's acquiescence in their conduct by investing significant time, energy, and money in the development of the CrossFit Kids program, and forewent other opportunities available to them.

132. The doctrine of laches thus bars CrossFit's claims.

Twelfth Affirmative Defense

(Statute of Limitations—Lanham Act Claim)

133. CrossFit may not assert claims for infringement, false designation, or dilution of its trademarks or service marks because the three-year statute of limitations on those claims has expired.

134. CrossFit granted the Martins a 100-year exclusive, irrevocable license to create, develop, and operate the CrossFit Kids program and use the CrossFit Kids name, receive support from CrossFit in operating that program, and receive 80% of all revenues from the training

1 seminars, and 100% of other all revenues attributable to that program and name. CrossFit
2 benefited from this arrangement by receiving wider promotion of its brand, expansion of its brand
3 into the youth market, and revenues from the CrossFit Kids training seminars.

4 135. With CrossFit's knowledge, acquiescence, and encouragement, the Martins
5 launched the CrossFit Kids program in 2004; began issuing CrossFit Kids workouts of the day that
6 year; began publishing the CrossFit Kids Journal in December 2005; published content to
7 crossfitkids.typepad.com, crossfitkids.blogspot.com, and crossfitkids.com; developed a CrossFit
8 Kids knowledge base, network, best practices, and curriculum; began teaching CrossFit Kids
9 training courses and issuing certifications in 2008; and continuously operated the CrossFit Kids
10 program until October 2014, when CrossFit terminated them.

11 136. Not until March 2014 did CrossFit take the position that the Martins did not hold a
12 license to use the CrossFit Kids name and operate the CrossFit Kids program, and not until
13 October 2014 did CrossFit file this action claiming that the Martins were infringing its trademarks
14 by operating the CrossFit Kids program.

15 137. The statute of limitations thus bars CrossFit's claims.
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PRAYER FOR RELIEF

WHEREFORE, the Martins pray that:

- A. CrossFit take nothing by reason of its Complaint;
- B. CrossFit's Complaint be dismissed with prejudice;
- C. The Martins recover their reasonable attorneys' fees and costs of suit; and
- D. The Martins be awarded such other relief as this Court deems just and proper.

Respectfully submitted,

Dated: December 3, 2014

EMERGENT LEGAL

By: 

Christopher Wimmer

Attorneys for Defendants and Counterclaimants
JEFF MARTIN, MIKKI LEE MARTIN, BRAND X
MARTIAL ARTS, and CROSSFIT BRAND X, INC.

DEMAND FOR JURY TRIAL

Defendants and Counterclaimants Jeff Martin, Mikki Lee Martin, Brand X Martial Arts, and CrossFit Brand X, Inc. demand a jury trial on all issues triable to a jury in this matter.

Respectfully submitted,

Dated: December 3, 2014

EMERGENT LEGAL

By:


Christopher Wimmer

Attorneys for Defendants and Counterclaimants
JEFF MARTIN, MIKKI LEE MARTIN, BRAND X
MARTIAL ARTS, and CROSSFIT BRAND X, INC.

EXHIBIT A

Execution Copy

CROSSFIT KIDS LICENSE AGREEMENT

INTRODUCTION

CrossFit Kids provides a fitness program for strength and conditioning of, and method of teaching this program to, children, adolescents, and teenagers.

This License Agreement (the "Agreement") is made and entered into as of the ____ day of _____, 2009 ("Effective Date") by and between Brand X Self Defense and Fitness, Inc., d/b/a CrossFit Brand X and CrossFit Kids, a California corporation with its principal place of business at _____ ("CrossFit Kids"); and CrossFit, Inc., a corporation with its principal place of business at 1250 Connecticut Avenue NW, Suite 400, Washington, D.C. 20043 ("CrossFit").

TERMS

1. Use of the CROSSFIT and CROSSFIT KIDS® Name and Other Trademarks

1.1 Grant and Scope of License

(a) Subject to the terms and conditions of this Agreement, CrossFit grants to CrossFit Kids, and CrossFit Kids accepts, an *exclusive*, non-transferable license to use the CrossFit Kids trademarks ("Licensed Marks") solely for the following purposes ("Licensed Uses"):

(i) To market CrossFit Kids classes and training, to include seminars and certification for CrossFit Kids licensed CF Kidss (discussed below);

(ii) In connection with certain fitness, strength and conditioning training, nutritional practices and related services consistent with the principles of CrossFit ("Licensed Services"), CrossFit Kids will put forth materials consistent with the CrossFit training methodology designed specifically for children and to teach licensed CrossFit trainers these principles and to certify them as CrossFit Kids licensed trainers;

(iii) In connection with the advertising, marketing, sale and rendering of Licensed Services, including the production of T-shirts and other fitness-related clothing and gear (collectively, "Promotional Materials"), CrossFit Kids is permitted exclusive use of the CrossFit Kids name in Promotional Materials and may sub-license CF Kidss to use the CF Kids mark with their CF Kids name only, consistent with the standard CF Kids License Agreement in effect by CrossFit.

1.2 Forms of Use

(a) CrossFit Kids shall use the Licensed Marks and shall include where appropriate the registered trademark designation ® and other proprietary notices as reasonably required by law. CrossFit Kids shall comply with all applicable laws and regulations pertaining to the proper use and designation of trademarks in each country in which it uses the Licensed Marks.

(b) In any use by CrossFit Kids of the Licensed Marks on Licensed Services and on Promotional Materials CrossFit shall have the right to make objections on the grounds that CrossFit believes that the use of such materials by CrossFit Kids will be damaging to or dilutive of the value of the Licensed Marks. CrossFit Kids will seasonably cease any use that CrossFit objects to.

(c) CrossFit Kids shall comply with all applicable laws and regulations and obtain all appropriate government approvals pertaining to its use of the Licensed Marks, and its sale, distribution and advertising of the services under the Licensed Marks.

(d) CrossFit Kids shall not use the Licensed Marks in connection with any activity that disparages CrossFit or its products or services, or that damages the reputation for quality inherent in the Licensed Marks.

(e) CrossFit Kids may use photographs, pictures, and selected CrossFit Journal material that is specifically for CrossFit Kids, in marketing and promoting its program, provided: (1) CF Kids properly attributes the authorship and ownership of said material, (2) in cases of links, CF Kids links directly to CrossFit's website or other original content, (3) if the content is not free to the public on the CrossFit website, the CF Kids uses pieces or selections only with permission.

(f) CrossFit Kids may develop its own content, to include photographs, video, and other professional training materials, in marketing and promoting the CF Kids program, provided that CrossFit retains the right to routinely at its discretion to audit such material and make objections to the content to the extent that the materials are inconsistent with the CrossFit training philosophy.

1.3 Ownership of Marks

(a) CF Kids acknowledges that it has no interest in the Licensed Marks other than the license granted under this Agreement and that CrossFit will remain the sole and exclusive owner of all right, title and interest in the Licensed Marks. CF Kids agrees that CF Kids' use of the Licensed Marks and any goodwill in the Licensed Marks resulting from CF Kids' use will inure solely to the benefit of CrossFit and will not create any right, title or interest for CF Kids in the Licensed Marks.

(b) CF Kids shall not contest, oppose or challenge CrossFit's ownership of the Licensed Marks. CF Kids agrees that it will do nothing to impair CrossFit ownership or rights in the Licensed Marks. In particular, CF Kids shall not register or attempt to register the Licensed Marks in any jurisdiction and will not oppose CrossFit's registration or use of the Licensed Marks, alone or with other words or designs, in any jurisdiction.

(c) CF Kids shall promptly notify CrossFit should CF Kids learn of use by a third party of any mark that is identical or confusingly similar to any of the Licensed Marks. CF Kids shall take no action with respect thereto except with the prior written authorization of CrossFit. CrossFit may take such action as it in its sole and absolute discretion deems advisable for the protection of its rights in the Licensed Marks. CF Kids shall cooperate fully to assist CrossFit with any legal or equitable action taken by CrossFit to protect its rights in the Licensed Marks.

2. Payment

In consideration for use of the Licensed Marks, CF Kids will retain 80% of all payments received from seminar or certifications run under the CF Kids banner; CrossFit will retain the balance. CrossFit Kids is responsible for all of its own expenses. Payment is forwarded to CrossFit Kids within 5 days of the end of the certification, as CrossFit runs the registration and payments through its online payment mechanisms.

3. Services and Support to be Offered by CrossFit

CrossFit shall make available to CF Kids reasonable access to background information in the areas of fitness, strength and conditioning training, including resources such as the CrossFit Journal, website promotion via the www.crossfit.com website and assistance with registration for CF Kids' seminars.

CrossFit shall, at its expense, conduct background checks on all prospective CF Kids seminar attendees/trainers to ensure that none have any criminal history inconsistent with teaching and training children.

CrossFit shall continue to maintain the registration and payment mechanisms for the CF Kids seminars as it has in the past and remit payment to CF Kids using the same mechanism that has been in place for the past several years.

4. CF Kids' Obligations

(a) CF Kids is solely responsible for the organization, operation, publicity, fundraising, incorporation, legal affairs and all other aspects of business, including selection, training and supervision of staff members and fitness instructors, training, supervision and monitoring of participants and patrons, and carrying out the activities of the business in a proper manner. CF Kids shall notify CrossFit if and when CF Kids is involved in any legal action or labor dispute in which CrossFit is implicated or involved in any way.

(b) CF Kids shall obtain and maintain, at its own expense, the following insurance policies: (i) real and personal property coverage; and (ii) comprehensive general liability coverage of no less than \$1,000,000.00 combined single limit per occurrence, and \$2,000,000.00 aggregate, and (iii) sexual molestation/sexual harassment coverage in the same amounts, providing protection which is standard or greater in the fitness and health club industry, for the benefit of CrossFit, Greg Glassman, Lauren Glassman, Jeff Martin, Mikki Martin, CrossFit's officers, directors, agents and employees, as well as CF Kids, against any claims, suits, loss or damage arising out of CF Kids' business and/or the Licensed Services. CF Kids shall include CrossFit as an additional insured under CF Kids' policy. As proof of such insurance, a fully paid certificate of insurance shall be submitted to CrossFit for approval, prior to the use of the Licensed Marks in association with CF Kids' business. Thereafter, any proposed changes in any certificates of insurance shall be submitted to CrossFit for prior approval.

(c) CrossFit Kids shall require written waivers of liability from the parents any individual who uses or participates in the CrossFit Kids program as offered by CF Kids. Such waivers shall be signed in advance of any use or participation in the Licensed Services, and shall release and hold harmless CrossFit, CrossFit Kids and their officers, directors, agents and employees from and against any and all actions, claims, liabilities, losses, damages, expenses, and costs (including court

costs and attorney's fees), without limitation for any property damage, personal injury, death or any other action, claim, liability, loss, damage or expense against CF Kids.

(d) CrossFit Kids shall maintain a website with an approved link to the CrossFit website and the CrossFit Kids and CrossFit Journal on the front page of its website.

5. Nature of Relationship – Independent Contractor

The parties to this Agreement are independent, and no agency, partnership, joint venture, employee-employer or franchisee-franchisor relationship is intended or created by this Agreement. Neither party shall have the power to obligate or bind the other party.

6. Term and Termination

(a) The term of this Agreement will begin on the Effective Date and continue for a period of three (3) years or until terminated in accordance with the provisions of this Agreement.

(b) This Agreement is terminable at will by either party. Either party may terminate this Agreement without cause and without intervention of the courts upon ninety (90) days written notice to the other party.

(c) In the event of any termination or expiration of this Agreement, CF Kids shall discontinue immediately all use of the Licensed Marks, and shall immediately transfer ownership of any Internet domain names containing "CrossFit Kids" or other Licensed Mark to CrossFit.

(d) Notwithstanding the foregoing, should Greg and Lauren Glassman (collectively or individually, the "Glassmans") no longer maintain a majority ownership stake in CrossFit, the term of this Agreement shall automatically extend for a term of three (3) years from the date of that transfer of ownership.

7. Not Assignable by CF Kids

Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by CF Kids, in whole or in part - except as described herein (or in ancillary license agreements) for the CF Kids' Affiliate Program - whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, or change of control without the prior written consent of CrossFit, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void.

8. Disclaimers

Each party acknowledges and agrees that the Licensed Marks and any other information or materials licensed or provided hereunder are licensed or provided on an "as is" basis and that neither party makes any representations whatsoever, whether express, implied or statutory, including without limitation any implied warranties of title, enforceability, or non-infringement.

9. Limit on Liability

With respect to this Agreement, except as set forth in Section 10 (Indemnification), in no event shall CrossFit or CF Kids be liable to each other or any third party for any direct, indirect, special or consequential damages including on account of expenditures, investments, leases or commitments made in connection with the activities or goodwill of either party, lost revenue, lost data and the like arising out of or in connection with this Agreement even if the parties have been advised of the possibility of such damages.

10. Indemnification

CF Kids shall indemnify, defend, and hold harmless CrossFit and their officers, directors, agents and employees from and against any and all actions, claims, liabilities, losses, damages, expenses, and costs (including court costs and attorney's fees), without limitation for: (a) misrepresenting any of the representations by or breaching any of the obligations by CF Kids in Section 4; (b) infringement or misappropriation by CF Kids of any intellectual property of any third party; (c) property damage, personal injury or death based on CF Kids' negligence, recklessness or willful misconduct; or (d) any other actions, claims, liabilities, losses, damages, expenses and costs arising out of CF Kids' operation of the CF Kids' program.

11. Miscellaneous

11.1 Notices: Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person; (b) sent by certified mail; or (c) sent by overnight or international courier, in each case properly posted and fully prepaid to the appropriate address set forth in the preamble to this Agreement. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

11.2 Waiver: Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

11.3 Severability: If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

11.4 Integration: This Agreement (including the Attachments and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to such terms, provisions or conditions. This Agreement may not be amended, except by a writing signed by both parties.

11.5 Governing Law and Choice of Forum: This Agreement will be interpreted and construed in accordance with the laws of the State of Arizona and the United States of America, without regard to conflict of law principles. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state courts located in Yavapai County, AZ, and the federal courts located therein, and each party hereby consents to the personal jurisdiction thereof.

11.6 Equitable Relief: CF Kids acknowledges and agrees that any breach of its obligations under this Agreement with respect to limitations upon its use of the Licensed Marks will result in irreparable harm to CrossFit which cannot be reasonably or adequately compensated in damages, CrossFit will be entitled to injunctive and/or equitable relief to prevent a breach and to secure enforcement thereof, in addition to any other relief or award to which CrossFit may be entitled.

In Witness Whereof, the parties have executed this Agreement as of the date first above written.

CrossFit, Inc.:

CrossFit Kids:

By:

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT B

CROSSFIT KIDS TRANSITION AGREEMENT

SALARY/COMPENSATION

Martins become salaried employees of CrossFit Inc., as follows:

First year: \$75,000 ea

Second year: \$50,000 ea

Third and subsequent years: \$40,000 ea

Martins receive compensation for seminars as follows:

First twelve Kids' certs each year, *taught by the Martins*: Split of net profit is 80/20, preponderance to the Martins.

Certs beyond twelve each year, or certs not taught by the Martins: Split of net profit is 80/20, preponderance to CrossFit, Inc

Price of attending a Kids course goes from \$595 to \$1000, effective 1 January 2011

TASKS EXPECTED FOR SALARY

Following are the tasks currently being performed by the Martins for the Kids program, which will remain as their role in maintaining and growing the Kids' program under the CrossFit Inc. umbrella:

CFK Website (*will eventually be a part of the Unified CrossFit site, but content will remain a Martin responsibility*)

- Daily WOD programming and posting
- Demo videos created
- Affiliates featured and linked and notified
- Affiliate/Certified Trainer links/postings

CFK Certification *tasks will be coordinated with the CrossFit Training department and implemented as the CFTD directs.*

- Post action Cert review and streamlining
- Addition of new content and organization
- Traveling Team training
- Host and Give at least one CFK Cert per month

CFK Affiliate support (*will be come certified kids programs support*)

- support document creation, updating and expansion
- phone calls
- emails

CFK Program Development and Expansion (*to be coordinated with the CrossFit Inc CEO and the CFTD*)

- Programming concept experimentation testing and implementation
- Outreach (pediatricians, private schools, rehab facilities)

CFK Program Support

- Answering questions from schools, rehab facilities other community based programs

CFK Research

- Research of new developments concerning kids, teens exercise
- Integration of new research into CFK Program

CFK Events Planning and execution: These are the currently projected or scheduled events, which will be coordinated with and supported by the CrossFit Marketing/Events Team. Future events will be similarly jointly supported.

- Orange County event with BMac Nov 2010
- LA Expo January 2011 (3 days)
- possible TV interview Lifetime/The Balancing Act Jan 2011
- Arnold Classic March 2011 (4 days)
- Presentation to State of Ca March 2011 (2 days)
 - possible Dry Run 14 and older team competition at CF Games July 2010

CFK Customer Service

- General Customer service questions
- Order fulfillment CFKM and Lesson Plans
- Annual Background Check renewals

CFK Facebook

- posting of CFK WOD
- posting of performance videos
- support information posts

CERTIFICATON SEMINARS

Overall oversight of the Kids Courses goes to the CrossFit Training Department (CFTD), managed by Dave Castro and Nicole Carroll

The Martins will report to the CrossFit Training Department for all issues related to the scheduling, conduct, logistics, support of CFK Courses

The Martins will have work in conjunction with the CFTD on course curriculum modification and development ,with specific content issues ultimately approved by the CEO.

AFFILIATE PROGRAM

As of 1 Sept 10, the CrossFit Kids' Affiliate program is disbanded

Current Kids affiliates will be notified of the change, but will remain CrossFit Affiliates with Certified Kids Programming in good standing and will also receive a \$500 credit for sending any additional trainers to a new Kids course

Kids affiliate applicants "in the pipeline" will be notified of the change and offered the credit if they have already paid a fee.

Credit goes to Affiliates who are current, paid new or renewal fees up until Sept 29th 2010 (date when the Martins stopped taking payment)

\$500 credit also applies to Affiliates whose renewal rates were \$150 or \$250

Comped Affiliates do not get a Credit

Affiliates who are not current, or asking to renew after a time lapse do not receive Credit

Those who figured a way around the system and paid Aff Fees by using a \$50 increment for background checks after September 29th, will get a refund from CFK, with explanation

The Martin's administrative staff will, at the Martins' expense, continue to perform all support functions for tracking the Kids' program, and any CrossFit Journal administrative tasks, to include

Maintaining the list of certified CFK trainers

Maintaining the list of trainer background investigation results

Ensuring annual Background Investigations are conducted on kids' trainers

Maintaining the list of CrossFit Affiliates who have certified kids programs (the CrossFit Affiliate team will be working to ensure this information is tracked in the CF database as well and this single piece may transition to CrossFit Affiliate team at some point).

-This support commitment will be reviewed in six months, in case admin requirements increase substantially and exceed an approximate aggregate cost of \$2000/month.

MEDIA AND CFK JOURNAL:

-As of 1 Jan 2011, the CFK Journal will no longer be provided as a separate publication.

-CFK Journal will be merged with the CF Journal. The Martins will continue to submit kids articles at approximately one per week, either their own authorship or via their pool of regular contributors.

-Outside contributors will be compensated at CFJ rates through the standard CFJ mechanism.

-Martin's CFKJ staff will continue to coordinate and preliminarily edit Kids' articles, on the Martin's payroll as before.

-Martins will produce the November and December 2010 Kids Journal issues as normal.

Effective 1 Jan 2011, CFKJ subscribers will be rolled into CFJ subscribers; if they have existing CFJ subscriptions those will be extended by the appropriate period. This information will be sent to the CFKJ subscribers in their November and December CFKJ deliveries.

DISAGREEMENTS:

Disagreements for any part of this agreement will be decided by the CrossFit CEO, or a designee appointed by the CEO.

Jeff Martin

Date

Mikki Martin

Date

Greg Glassman

Date